



Tauranga City Council

Review of Council's Building Services Department

Final Report

June 2017

TABLE OF CONTENTS

1.	SCOPE AND APPROACH	2
2.	CONTEXT - COUNCIL's BUILDING DEPARTMENT	8
3.	KEY OBSERVATIONS AND RECOMMENDATIONS	10
4.	DETAILED FINDINGS	17
	APPENDIX 1 - LIMITATIONS OF THE REVIEW PROJECT	33
	APPENDIX 2 - SUMMARY OF SURVEY OF TAURANGA CITY COUNCIL EMPLOYEES	34
	APPENDIX 3 - COPY OF CONTRACT WITH HOLMES FARSIGHT	36
	APPENDIX 4 - REVIEW SCOPE LETTER	49



Tel: +64 7 571 6280
Fax: +64 7 571 6281
www.bdo.co.nz

Level 1
The Hub
525 Cameron Road
PO Box 15660
Tauranga 3144
New Zealand

Private & Confidential

9 June 2017

Mr G. Poole
Chief Executive
Tauranga City Council
Private Bag 12022
Tauranga 3143

Dear Garry

We present our report pertaining to our review of the Tauranga City Council's (TCC) Building Services Department, in accordance with our letter of engagement dated 27 February 2017. This report sets out a summary of the work we have performed, our findings, observations and recommendations we have made.

We would like to take this opportunity to acknowledge our appreciation for the assistance and co-operation provided to us, particularly by Kirsty Downey and Council employees involved in addressing our information requests and dealing with our queries as they arose during the course of the review.

Yours sincerely
BDO Tauranga

A handwritten signature in black ink, appearing to read 'Fraser Lellman', with a small dot at the end.

Fraser Lellman
Partner

1. SCOPE AND APPROACH

The scope of this engagement was to undertake a review and provide observations and recommendations in relation to the following key scoping aspects. An overview of the key activities to complete each scoping aspect is outlined as below.

Scope Element	Approach
1. Review the Culture and Leadership of Council's Building Department	Interview current employees, immediate past employees and other key stakeholders, such as property developers, and consider their observations as regards the culture and leadership of the Building Department in respect of their engagement with other Council business units as well as external customers.
	Consider the culture, leadership and practices of the Department against the operations of other Building Departments for Council's around the Country.
	Conduct probity checks of key Building Department employees, particularly consent processing and inspection staff.
2. Review the dealings of Council's Building Department with Bella Vista Homes	Review a sample of Bella Vista project files and review the "cradle to grave" documenting and approval of Council's decisions and consents in relation to the projects.
	Interview key staff at Bella Vista Homes and document observations regarding their dealings with Council.
	Interview other similar Property Developers and document observations regarding their dealings with Council.
3. Review the formulation, approval and application of Council's GeoTech policy	Consider the process and rationale behind the formulation of the GeoTech Discussion Paper, the approval and application of the paper, if any, as Council Building Consent policy.
	Consider the consistency of building consent policy as applied generally, and the governance around designing, approving and communicating policy in the TCC Building Department.

Based on our review of the above areas, we have highlighted in this report the issues identified, their implications and our recommendations for improvement.

Key Activities

To complete the objectives of this engagement, we have performed the following activities:

Review the Culture and Leadership of the Building Department

- Conducted a cultural survey of all Building Department Staff;
- Conducted a cultural survey of all TCC business units that interact with and are stakeholders in the operations of Council's Building Department;
- Conducted probity checks for potential conflicts;
- Interviewed key TCC staff;
- Interviewed builders, developers and other external; stakeholders/consumers of TCC Building Department Services.

Review the dealings of Council's Building Department with Bella Vista Homes

- Met with staff and representatives from Bella Vista, discussed and reviewed their files in relation to their dealings with Council;
- Reviewed Council files in relation to the consent applications submitted by Bella Vista;
- Interviewed and corresponded with other builders and property developers in the municipality and sought their views in relation to dealing with the TCC Building Department;
- Received and reviewed submissions from other builders, property developers and stakeholders in relation to the operations of the TCC Building Department.

Review the formulation, approval and application of Council's GeoTech policy

- Considered the process and rationale behind the formulation of the GeoTech Discussion Paper, the approval and application of the paper, if any, as Council Building Consent policy;
- Considered the consistency of building consent policy as applied generally, and the governance around designing, approving and communicating policy in the TCC Building Department.

BDO's reference points

Liaisons

Garry Poole - Chief Executive

Kirsty Downey - General Manager, Chief Executive's Group.

Interviews - Council

We have used interviews with relevant Council management and staff as a fixed point of reference for conducting our review. The management and staff interviewed included (but were not limited to):

Position

Building Services Manager

General Manager Environmental Services

Transformation and Change Manager Building

Interviews and Correspondence - External Stakeholders

Company/ Stakeholders

Absolute Design Solutions Limited

Adobe Construction BOP Limited

B & S Porter Family Trust

Bella Vista Homes

Boffa Miskell

Brunel Construction

Calley Homes Limited

Carrus Corporation

Design Builders Bay of Plenty

Formsteel

Fowler Homes

G.J. Gardener Homes (Tauranga)

Gascott Contractors

Generation Homes

Havensite Homes

Company/ Stakeholders

Heating Systems Limited

Highmark Homes

Maiden Group

Marra Construction (2004) Ltd

Oceanside Homes

Proform Homes

Property Managers Group

R & R Homes

Renovations Sorted

S & L Consultants (behalf Bella Vista)

Sharp Tudhope

Stevenson Accounting Ltd

Versatile Homes and Buildings

Other Stakeholders

Individual Builders

Family Trusts

Ratepayers

Cultural Survey 1 - Building Department

We surveyed 119 staff within the TCC Building Department comprising of Asset Delivery, Building Services and Environmental Planning and received 55 responses. A copy of the survey questionnaire is attached as an Appendix 3 to this report.

Cultural Survey 2 - Internal TCC Stakeholders to the Building Department

We surveyed 41 staff within Council as key stakeholders to the Building Department comprising of Alpha Project, Communications, Legal, Finance, ICT and Customer Service teams and received 10 responses. This survey asked different questions.

EXECUTIVE SUMMARY

Review the Culture and leadership of the Building Department.

The report found that there is an expectation gap between the TCC Building Services Department and external users of the function. The key areas where external stakeholders were seeking improvement were;

- overall timeliness of consent assessment;
- clear and timely communication in requesting additional information from the external user; and,
- consistency in application of Building Act & Code from consent to consent.

In fairness to TCC, many delays in the consenting process are due to the poor quality of the original consent application by external parties. The Request for Information (RFI) process is used to obtain information previously lacking in the original application.

We recommend the establishment of a TCC Building Services Customer Engagement Plan to address this. We also recommend an internal TCC Process Improvement change whereby Consent Applications are screened by TCC Building Consent Authority staff on submission, and any applications lacking in the appropriate quality are rejected before entering the BCA

From a survey of TCC Building Department staff and internal stakeholders conducted by BDO, employees were mixed in their view of the leadership and culture of the Building Services Department. Their foremost views were;

- inadequate personnel resourcing of the department;
- lack of time for training; and,
- an overall lack of necessary technical skill in the department.

We recommend that the findings as reported be considered and worked forward by the Department in conjunction with staff and TCC People and Capability, to address the key themes identified above.

In the month of March 2017, we note that TCC Building Department outsourced approximately 50% of consent processing to external service providers. We found that the procurement arrangements associated with these outsourced service providers did not follow TCC Procurement Policy in that they were not market tested, emergency relief for market testing under the procurement policy was not evidenced and insurance risk appears heavily weighted in favour of the outsourced service provider. Further, the contract between TCC and provider Holmes Farsight, as reviewed by us appeared to have sections redacted, namely Section 5.1. Since September 2015, council has spent over \$1.286m with Holmes Farsight, who are not an accredited Building Consent Authority.

We also note that the 20 day statutory clock under Section 48 of the Building Act 2004 is not an accurate measure of the efficiency and effectiveness of a Council Building Consenting Authority. The statutory clock is not reflective of the elapsed time to process a Building Consent. Other peer councils use average elapsed time to process, as the statutory clock can be stopped and restarted for a number of reasons including research and the issuing of Requests for Information. We did note inaccuracies in stopping and starting the statutory clock, which casts doubt on the accuracy of this measure. We recommend that average elapsed time be also reported as a truer measure of the efficiency and effectiveness of the TCC BCA.

Review the dealing of Councils Building Department with Bella Vista Homes

In the performance of our inspection of the TCC consent files by our technical building consent expert, which did not constitute an audit or forensic examination, we found no evidence to suggest deliberate obstruction on the part of TCC Building Services in relation to its dealings with Bella Vista Homes nor, however, did we review every aspect of the allegations or evidence provided by Bella Vista.

There is no doubt that TCC Building Department have learnings from their dealings with Bella Vista over the past 12 months. The learnings in relation to customer service and the consistency of inspector interpretation and application have been acknowledged in our findings in relation to customer service in Scope Section 1.

Review the formulation, approval and application of Council's GeoTech policy

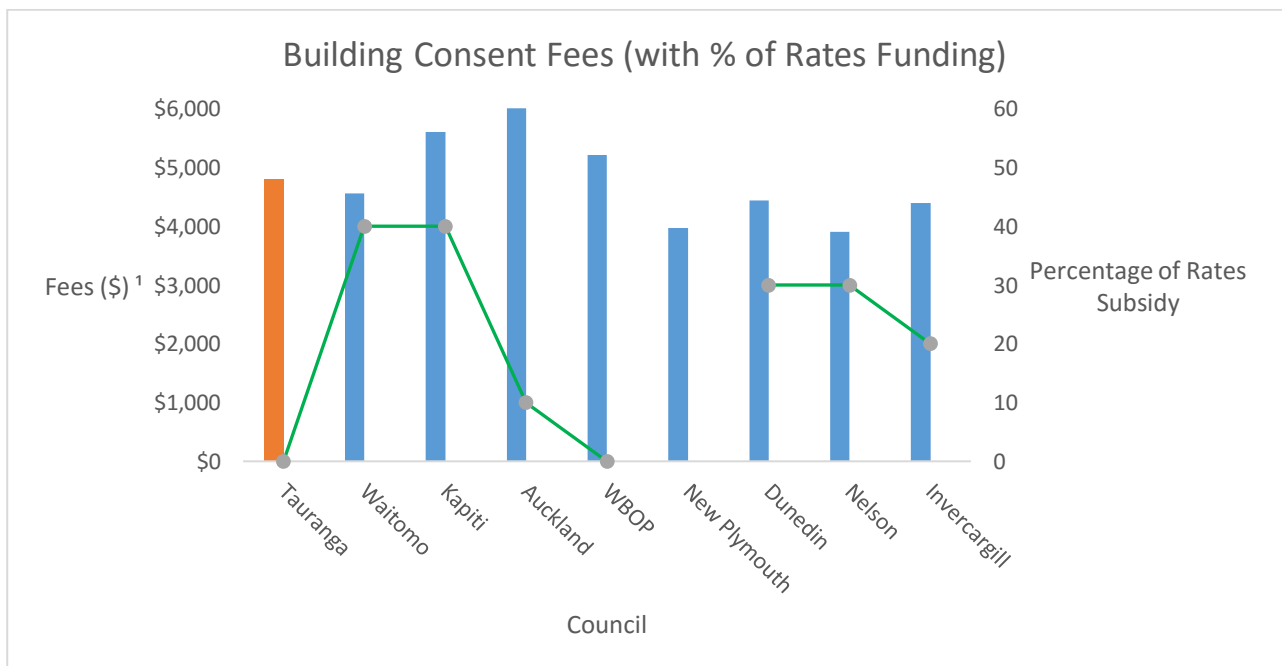
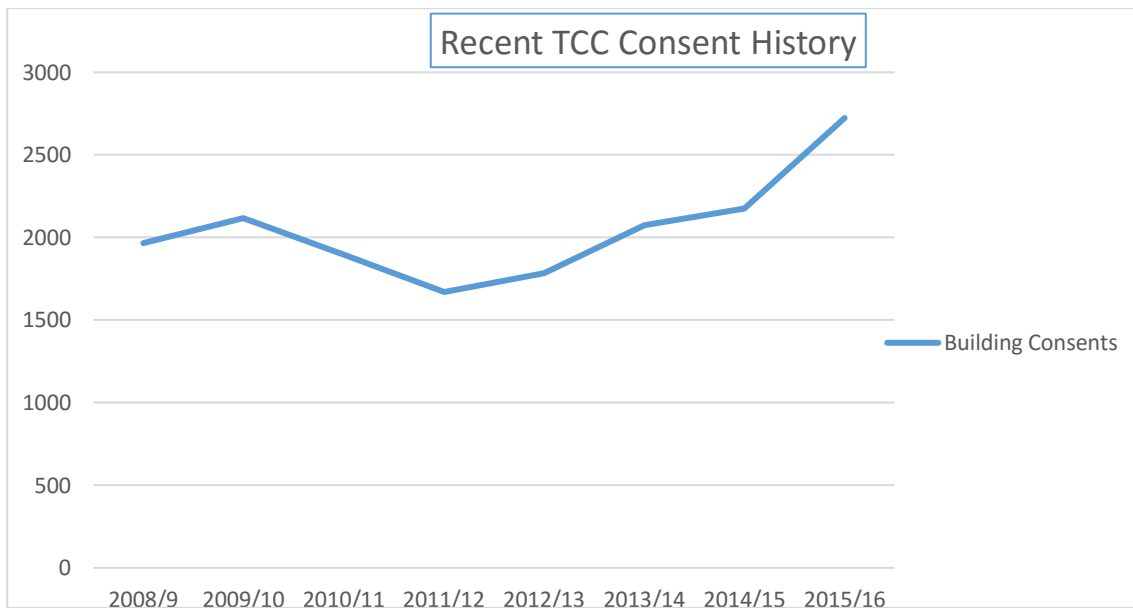
We recommend that TCC should go through a risk analysis and approval process to ensure not only the regulatory and commercial impacts of Building Services policy are appropriate, but the risks of the application of the policy are considered. Key policy, such as Council's geotechnical interpretations, should also be evidenced in writing and approved in accordance with an appropriate delegated authority.

We also note that the root cause of the TCC Building Services approach to geotechnical risk stems from some unique aspects of the Tauranga City Plan. Unlike other major cities in New Zealand the Tauranga City Plan is silent in relation to earthwork rules. As the City expands residential development is shifting toward higher and more challenging ground and, the lack of earthwork rules in the city plan becomes a greater risk. Other councils require geotechnical analysis by lot at the resource consent level for a subdivision, with costs generally borne by the developer. In the absence of such requirement in Tauranga we are effectively passing geotechnical examination and cost down to the builder and ultimately the property acquirer.

We recommend that the City Plan be reviewed to consider the development of earthwork rules to mitigate this risk and bring the cost for geotechnical assessment into line with other major City municipalities around New Zealand

2. CONTEXT - COUNCIL'S BUILDING DEPARTMENT

Tauranga City Council is one of the fastest growing municipalities in the country. Over the past eight years, TCC's Building Department, or the outsourced accredited body that performed the role on behalf of Council, have processed on average over 2,000 building and dwelling consent applications per year, with consistent growth in the consent application rate over the past three years.



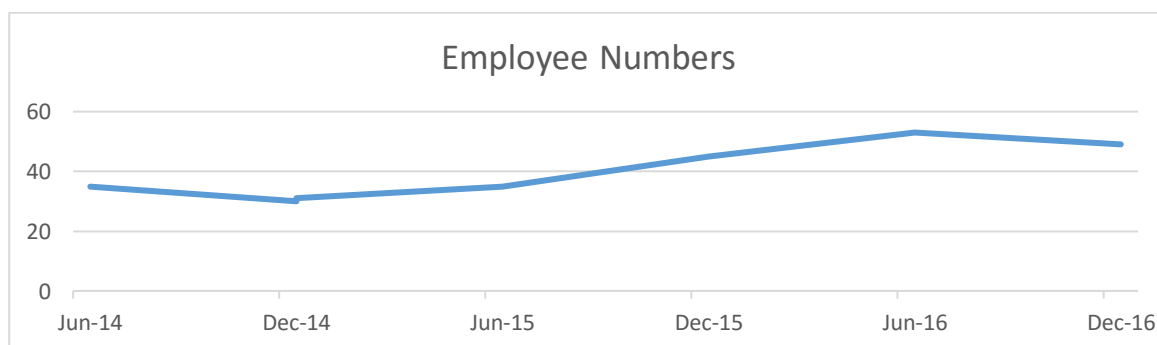
The TCC Building Department is self-funded, that is it is funded by fees and charges levied and not subsidised by rate income. Other councils in New Zealand do subsidise the cost of their Building Departments with rating income, thus creating a pricing differential between TCC and other Regional and District Councils. This is also presented in the graph above with the green line indicating the level of subsidy. Whilst the pricing of consents has a degree of variability, the TCC Consent Charges are at the higher end of the New Zealand Council spectrum. Below we have shown the relative costs of building consents for a number of New Zealand Regional and District Councils.

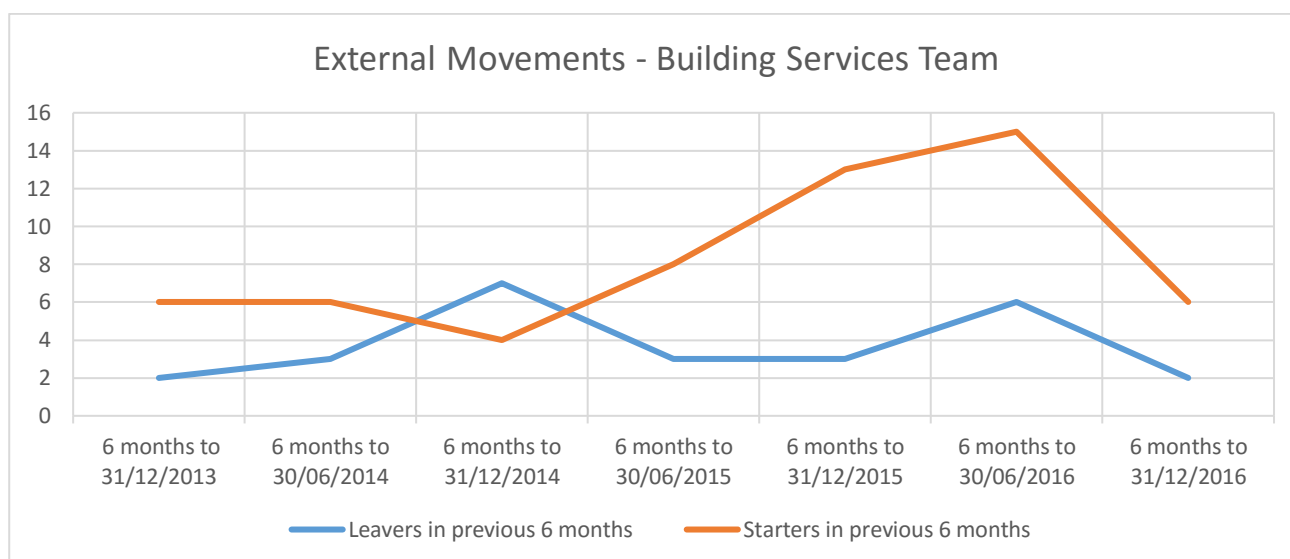
It should be noted that the presentation of these costs is with the following considerations:

- Actual invoices were analysed for Auckland, Tauranga, Waitomo and Western Bay of Plenty Councils. The remaining Councils were analysed based on a combination of information from their Annual and Long-Term plans, and guidance provided to us by our technical experts on the matter.
- Invoices and projections for fees were, where possible, based on a building consent fee for a standard residential (R1) house build.
- When presenting the consent fees, we removed any development contribution fees from our calculations. Development contributions or financial contributions are fees payable towards the infrastructure that is required as a result of the growth of Tauranga City. These fees may be payable on service connections, building consents and resource consents. We also noted that none of the other Councils we reviewed charged development contributions on the same invoice as their building consent.

As of the time of this report, the TCC Building Services team employs 68 staff including 10 contractors. This does not include the Asset Delivery or Environmental Planning teams which also input into the Building Consent Process. Some consent processing services are outsourced to other Councils including Porirua City Council, and private companies including Holmes Farsight. In March 2017, over 50% of consent processing was performed by parties external to the TCC. Further, March 2017 was a record consent processing month by value for TCC with over \$46 million in consent value for new dwellings being issued.

As documented in subsequent sections of this report, there has been significant turnover of Building Services personnel over this period. This is shown below:





Note: The underlying data for the above two graphs was provided by TCC's People and Capability team. The figures for 'Leavers' and 'Starters' during the above periods do not include any internal transfers from within TCC.

3. KEY OBSERVATIONS AND RECOMMENDATIONS

TITLE	SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS
Development of a Building Department Customer Service Plan Drawn down from detailed findings in Sections 4.1, 4.2, 4.4, 4.5, 4.6, 4.7, 4.8.	We noted through our review, that there is a gap between the expectations of builders/developers as consumers of Council's Building Department Services, and the staff of the Department. We formed this view based on the following: <ul style="list-style-type: none"> • Meetings and correspondence with and feedback from over 70 builders, architects and developers; • Our technical review of the TCC Building Department files in relation to the matters and customer complaints referred to us; and • Discussion, interviews and the surveying of Building Department staff. The key findings from this work which formed this conclusion included: <ul style="list-style-type: none"> • Direct feedback from builders and developers that TCC Building Department is overly bureaucratic in its interpretation and application of

	<p>the Building Code and Building Act 2004 in processing consent applications;</p> <ul style="list-style-type: none"> • Direct feedback from builders and developers that the TCC Building Department is not timely in its processing of consent applications; • Direct feedback from builders and developers that the inspection regime and output was inconsistent due to the visits by multiple inspectors to the same site; • Despite TCC averaging over 95% compliance over the past 12 months with the 20 working day consent processing requirement under Section 48 of the Building Act 2004, the average elapsed working days to process consents in accordance with TCC's internal data is 41 days; • Our technical review of TCC files provided evidence that, for a number of complaints made and files reviewed, that consent applications from builders and developers were lacking the required level of technical quality, leading to further Requests for Information (RFI's) from TCC rather than addressing the root cause of the technical deficiencies of the application and communicating that back to the applicant; • TCC Building Department currently does not have a dedicated customer service employee resource to consider and manage communication to stakeholders; • Other Councils of similar and smaller size employ Customer Service Officers for their Building Departments; • Other Councils of similar and smaller size allocate funds for Building Department customer engagement; and • TCC Building Department does not have a formal Customer Service Plan that considers and documents for Council; <ul style="list-style-type: none"> - Regular engagement strategy with stakeholders and peak bodies including, Builders, Developers, the Registered Master Builders Association of New Zealand, Certified Builders, New Zealand Institute of Architects, Engineers New Zealand; - The structure of the Building Inspection team; - Customer engagement behaviours expected by Building Services Inspection Staff; - Meaningful performance indicator monitoring and reporting around stakeholder engagement; - Use of trained staff to receive consent applications and review for completeness and accuracy on receipt; and - A complaint management system for the Building Services Team, similar to the RFS or Request for Service system used by Building Teams at other like Councils. <p>As a result, we recommend that Council develops and costs a formal Building Services Customer Engagement Plan that considers the aspects outlined above, and also includes the communication and roll out of the new AlphaOne Consenting Platform.</p>
--	---

<p>Reporting of Building Department Performance to Management and Council</p> <p>Drawn down from detailed findings in Sections 4.2, 4.5, 4.6.</p>	<p>We noted through our review, that the TCC Building Department uses, as its key reported performance indicator, the statutory performance obligation under the Building Act 2004 being the 20 working day requirement to process consent applications.</p> <p>Whilst being a legislative requirement, this performance indicator is not an accurate reflection of the efficiency, effectiveness and engagement of the TCC Building Services Department. The 20 working day requirement can be started and stopped based on consent technical review, requests for information sent and other factors. Our review of consent applications processed by TCC over the past two years showed an average elapsed time of 41 working days per consent, which does cover time when the legislative clock is started and stopped.</p> <p>Our review also uncovered instances where the statutory clock under Section 48 of the Building Act was not stopped and started correctly. We sighted evidence where TCC Development Engineers had stopped the clock by issuing request for information (RFI) letters yet other TCC team members within Building Services were performing further review work on the consents while this ‘stop’ was in place. The consents were 57477, 54736 and 56642. It must be noted however, that we found nothing to suggest that this was an intentional method to delay the statutory clock.</p> <p>Whilst it does appear that TCC is meeting the legislative obligation under the Building Act, issues around efficiency and customer engagement can be masked. As above, we also noted instances where the clock was stopped incorrectly in our view.</p> <p>We note that other Councils do report elapsed time to consent as a key measure of performance.</p> <p>We recommend that TCC do similar as part of a suite of performance measures to be considered under the formal Customer Service Plan outlined above.</p>
<p>Process Improvement Opportunities for Building Services</p> <p>Drawn from detailed findings in Sections 4.1, 4.2, 4.4 to 4.8.</p>	<p>We noted through our review that consent applications are received by Customer Service Staff without a robust and up front analysis by trained staff of the quality of the application. Effectively, incomplete applications are being accepted then processed through the Request for Information framework, absorbing time and resources, when the application could be vetted effectively on submission and refused if incomplete. Other Councils of a similar size will use either appropriately trained or Building Services Department staff to vet the application on receipt for quality and completeness.</p> <p>As an example, Bella Vista Homes submitted a consent application that did not include basic compulsory elements such as a Bracing Plan and Lintel sizes. That consent application for the property subsequently transitioned through 81 Requests for Information.</p> <p>We recommend that Council consider implementing the process whereby consent applications are reviewed technically for accuracy and completeness on submission and return (without further assessment) applications which do not sufficiently demonstrate compliance with the Building Code/Act and/or do not show necessary detail for assessment.</p> <p>We do note that the new AlphaOne on-line consenting system does now have inbuilt technical vetting functionality. This system was activated on 1 April, 2017</p>

	<p>and we suggest on-going monitoring of this control to ensure effectiveness and a reduction in Requests for Information and average consent processing periods.</p> <p>We received feedback from the Builders and Developers interviewed that a regular source of frustration was the inconsistency of Building Inspectors and their deliberations. Currently, TCC Building Services work with a regional inspector model, with a pool of inspectors allocated to a particular region of the municipality. Often, single builders and developers may be visited by a number of inspectors during a consenting and building compliance process, with varying degrees and differences of interpretation. We also received feedback that this frustration was ultimately solved, particularly in Bella Vista Homes' case, by allocating a specific inspector to this Builder.</p> <p>We recommend that, as part of the Customer Service Plan recommendation outlined above, that TCC Building Services considers an Account Management structure for Inspectors, whereby builders and developers of a particular size or activity are allocated a dedicated inspector to ensure clarity and consistency of interpretation of and compliance with the Building Code and the Building Act 2004, and to give direct feedback to the builder or developer.</p>
<p>Use of External Building Consent Processing Providers</p> <p>Drawn down from detailed findings in Sections 4.2, 4.4, 4.6, 4.9.</p>	<p>In the month of March, 2017, TCC outsourced around 50% of its consent processing services to external providers including other councils and private companies such as Holmes Farsight, Comply New Zealand and Solutions Team. Both Holmes Farsight and Solutions Team are not accredited by International Accreditation New Zealand (IANZ) in relation to the assessment of Building Consent Applications. Comply New Zealand are accredited to Inspection Body Standard 17020, but not to the BCA accreditation regulations. Thus, TCC must have an audit and compliance regime in place as part its IANZ accreditation to ensure the quality of the outsourced service providers.</p> <p>TCC are effectively outsourcing accreditation, quality and stakeholder risk to these entities. As we understand, the financial arrangements with these entities have not been market tested to ensure ratepayer value. Under the TCC Procurement Policy, any anticipated spend or financial commitment of over \$100,000 should be market tested unless there's an emergency need or a technical requirement, with either such exemption being documented. We have not sighted such an exemption, and we have not sighted a contract for the Comply New Zealand arrangement. To date, since 28 May, 2015, TCC have spent \$1.256million with Holmes Farsight. Since 16 September, 2016, when it appears the relationship commenced, TCC have spent \$189,564 with Solutions Team.</p> <p>We have not sighted any formal TCC contract with Comply New Zealand, and given the risks associated and the financial commitments made to such private entities, we recommend that these arrangements be reviewed to ensure that Council's risk is appropriately considered and mitigated under contract, and the financial arrangements provide best value for ratepayers. We also note that the insurance clauses as listed in the Holmes Farsight contract with TCC, as noted in Appendix 3, appear heavily weighted in favour of Holmes Farsight, and TCC BCA Management are unsure whether the obligations under paragraph 7.2, in naming Holmes Farsight staff on TCC Public Liability and Professional Indemnity policies, have been met. We recommend that the insurance risk in these arrangements be reviewed.</p> <p>In reviewing the Solutions Team contract, we note that both the Public Liability and Professional Indemnity Insurance Cover of \$5million respectively</p>

	is lower than the TCC standard contracting requirement of \$10million respectively. Again, we recommend that the risks of this arrangement be reviewed and appropriately mitigated.
<p>Staffing and Culture of the TCC Building Services Department</p> <p>Drawn down from detailed findings in Sections 4.1 to 4.6 and 4.8.</p>	<p>We have noted in this report the observations from the surveys conducted for both the TCC Building Services Team, and the TCC stakeholders to Building Services Team. Common themes have been noted and reported as findings following by question asked (refer to 4.1).</p> <p>We note that staff turnover in Building Services has been high. One reason for that turnover is that it is symptomatic of housing growth in the region and the demand for Building Services Staff generally across the Country, both within Local Government and by private building consent processing companies. From our work, we conclude that this cannot be the only reason for the staff turnover, but we had no exit interview data to base this on. We then considered the survey results internally from Building Services Staff which did document the following as potential inhibitors to staff tenure:</p> <ul style="list-style-type: none"> • Under-resourcing of the department and the workload/pressure placed on existing staff; • The lack of a formal professional development plan for staff; and • The lack of a formal training structure for Building Services staff. <p>We conducted a survey of other TCC divisions as stakeholders to the Building Services Department, including the Alpha One Project Staff, Communications, Finance, ICT, Legal and People and Capability Divisions. We received 10 responses from 41 staff surveyed, with the key observations regarding the culture of the Building Services Department being:</p> <ul style="list-style-type: none"> • The workload of the Building Services Department does appear extreme; • The Building Services Department appears to be isolationist; and • An authoritarian attitude exists and the division is not openly prepared to work with others. <p>Whilst surveys do not give a high level of assurance on findings as to the staffing and culture of the Building Services Department, they certainly do give direction and we note that this is the first time that any cultural and engagement survey has been conducted for the Department.</p> <p>We recommend that the findings as reported be considered and worked forward by the Department in conjunction with staff and TCC People and Capability, to address the key themes identified.</p>
<p>Bella Vista Homes</p> <p>Drawn down from detailed findings in Sections 4.4, 4.5, 4.6.</p>	<p>We met with the Directors, Management and key external advisors to Bella Vista Homes (Bella Vista). As Council are aware, Bella Vista are considering legal action against Council for the impacts associated with the alleged stop work order placed by Council on 22 houses being developed by them in The Lakes sub-division. There are two limbs to the Bella Vista allegations being:</p> <ol style="list-style-type: none"> 1. The legitimacy or otherwise of the stop work orders placed on their developments; and 2. Evidence alleging TCC Building Services management deliberately took action to impede the Bella Vista business and, consequently, cause loss to Bella Vista. <p>There are certainly learnings for Council from the Bella Vista case, and these have been reflected in our findings above, particularly in relation to the up-front</p>

	<p>technical review of consent applications, and the Key Account Structure and customer engagement behaviour of Inspectors.</p> <p>Our technical review (performed by our technical building consultant) of the Bella Vista files identified contributory factors which impacted TCC's actions towards Bella Vista, which included:</p> <ul style="list-style-type: none"> • Incomplete consent applications submitted by Bella Vista; • Works conducted by Bella Vista which differed to the consent granted; and • Conducting earthworks in excess of that approved. <p>As regards to the evidence in support of the Bella Vista position, the Team Manager - Building Services certainly disputed aspects of the allegations, but this was not specifically quantified to us other than the TCC stop work covenant was, in his view, only placed on 5 of the 22 sites being developed by Bella Vista.</p> <p>In the performance of our inspection of the TCC consent files by our technical building consent expert, which did not constitute an audit or forensic examination, we found no evidence to suggest deliberate obstruction on the part of TCC Building Services in relation to its dealings with Bella Vista Homes nor, however, did we review every aspect of the allegations or evidence provided by Bella Vista.</p> <p>Please refer to Sections 4.4 and 4.5 for more detail regarding the Bella Vista matter.</p>
<p>Council's GeoTech Policy Formation</p> <p>Drawn down from detailed findings in Section 4.7</p>	<p>From our discussions with Building Services Management, we noted that there was no formal GeoTech Policy to support the interpretation of the Building Code and Building Act 2004 in relation to Geotechnical risks and consent applications both immediately prior to and post December 2016. We found that the approach was based on guidelines which had been internally developed but not formalised. There did appear to be consideration of a policy adoption which resembled that of other metropolitan council(s).</p> <p>We recommend that TCC should go through a risk analysis and approval process to ensure not only the regulatory and commercial impacts of the policy are appropriate, but the risks of the application of the policy are considered. Key policy, such as Council's Geotech interpretations, should also be evidenced in writing and approved in accordance with an appropriate delegated authority.</p> <p>We also note that the root cause of the TCC Building Services approach to geotechnical risk stems from some unique aspects of the Tauranga City Plan. Unlike other major cities in New Zealand the Tauranga City Plan is silent in relation to earthwork rules. As the City expands residential development is shifting toward higher and more challenging ground and, the lack of earthwork rules in the city plan becomes a greater risk. Other councils require geotechnical analysis by lot at the resource consent level for a subdivision, with costs generally borne by the developer. In the absence of such requirement in Tauranga we are effectively passing geotechnical examination and cost down to the builder and ultimately the property acquirer.</p>
<p>Conflict of Interest Building Services Department</p>	<p>We recommend that the existence and application of the TCC Conflict of Interest Policy be reinforced with TCC Building Services staff, particularly given the significant turnover in Department staff over the past two years. Whilst we did</p>

Drawn down from findings in Section 4.3	<p>not sight evidence during the course of our work, other than the potential risk posed by the example noted in Section 4.3, we certainly noted a heightened conflict of interest risk surrounding the operations of the Building Services Department including:</p> <ul style="list-style-type: none">• Record levels of divisional activity and high staff turnover;• Outsourcing of consent processing to third parties without a formal contracting process considering risk, quality frameworks, accreditation, conflict of interest and best value amongst other elements.
---	--

This report has been prepared for Tauranga City Council in accordance with our engagement letter and we disclaim any assumption of responsibility for any reliance on this report to any persons or users other than Tauranga City Council, or for any purpose other than that for which it was prepared.

The work completed by BDO is subject to the limitations set out in Appendix 1.

4. DETAILED FINDINGS

Our findings have been derived from our work performed as outlined in Section 1 of this report.

4.1 Observations of Culture and Leadership of the Building Services Team by TCC employees

Review Findings:

BDO interviewed members of and stakeholders to the building industry, in addition to key members of the Building Services department and the Executive Leadership Team of TCC.

The significant findings were as follows;

We surveyed 119 members of TCC Teams directly involved in the Building process, which included not only Building Services staff, but Asset Delivery and Environmental Planning. Of the surveyed personnel, 55 responded to the survey within the allocated timeframe of a week.

From the respondents:

- 20 employees described the culture as positive from their perspective and 15 described it as negative. A common theme was the pressure the team was under without much in the way of reward/thanks. It was also noted that a small number of survey responses were critical of team management alleging bullying and sexism as issues.
- 21 respondents said they had enough support in their role from TCC as a whole, whilst 31 respondents said they did not have support with the primary reasons given were:
 - A lack of personnel resources;
 - Minimal support from other TCC teams/Management/Executive; and
 - Negative attitude of management/executive
- There was an even split between employees in these teams who thought they had adequate training to undertake their job efficiently compared to those that did not. Of the 55 respondents, 49 suggested that they did not believe there was sufficient time in their work schedules to accommodate the necessary training, and 45 of the 55 respondents stated that they believed the department was understaffed and potentially underskilled.
- We offered the surveyed employees an opportunity to provide us with their perspective on which items cause the most industry complaints. The responses were as follows:
 - Consistency of interpretation of Code/Building Act;
 - Timing and inconsistent use of Requests for Information (RFI's);
 - Inspection wait-times and the number of inspections required;
 - Increase in standards demanded by Building Services team of the industry; and
 - The lack of communication between Building Services and the Industry around the necessary requirements of specific aspects of consent/CCC/COA submissions.

In addition to the above we asked respondents to comment on other barriers that they believe slow or hinder the compliance process at TCC. The three most obvious themes related to;

- A lack of adequate communication - between teams at TCC and externally from the Building Services team to the industry;
- Inadequate resourcing for the Building Services team to undertake their role; and
- The poor quality of applications for consent, especially from a design perspective.

Other answers were as follows:

- Education of staff needed improving to achieve a generally higher knowledge of best practice and reasonable practical approaches to issues.

- Time taken to perform administrative tasks and deal with a multitude of Information Technology platforms slows things down.
- Physical lack of space for paperwork/filing/to perform day-to-day tasks.
- Insufficient in-house specialists for technical reviews.
- Interference from Executive/Mayor/Councillors either directly or indirectly without consideration of the framework Building Services must adhere to and consistently siding with the applicant without actually understanding the issue.
- Issues in dealing with other departments, costs of purchasing items through BOPLASS providers.
- Too many meetings where management are not prepared to make clear decisions.
- Roll out of new (AlphaOne) system has been poorly managed by personnel with little understanding of the Building Services role on a practical level.
- Lack of one person responsible for the tracking of individual consents/applications.

We surveyed 41 members of TCC teams who provide support to the Building Services team either directly or indirectly. These teams were: Finance, ICT, Legal, People and Capability, Customer Services, Communications and Alpha Project.

Of those surveyed we had only 10 responders. The most consistent findings from those surveyed were as follows:

- The workload in Building Services appears excessively heavy and therefore additional resources, whether in terms of experience or sheer personnel numbers, are necessary.
- The new AlphaOne system has high expectations for a provision of greater efficiency.
- The Building Services team appeared to other personnel to be working “in a silo” without sufficient cross-communication or adherence to a common strategy. This comment was also made in relation to TCC teams as a whole.
- Building Services always appear to be playing catch-up with resources (Personnel, IT) being demanded on an instant basis.
- It was noted that some comments stated that the Building Services Team, particularly management, had a poor attitude, were arrogant and authoritarian, and did not seek to work with stakeholders on matters which could have been resolved with a collaborative approach.
- A suggestion from one response was that, due to a significant number of the consents being submitted by group builders on large sub-divisions, the process could be fast tracked by having pre-approved plans/details for standard design home plans. When a builder builds a large number of similar homes they should not be required to duplicate the information every time.

Recommendations:

Whilst surveys do not give a high level of assurance on findings as to the staffing and culture of the Building Services Department, they certainly do give direction. We understand that similar surveys have been performed for the whole of TCC in both 2013 and 2015.

We recommend that the findings as reported be considered and worked forward by the Department in conjunction with staff and TCC People and Capability, to address the key themes identified above.

4.2 Comparisons of department culture and statistics in relation to other Councils around New Zealand

Review Findings:

A recurring theme from our interviews with external parties and stakeholders of the Tauranga Building Industry identified that TCC was more difficult than other Councils/Building Consent Authorities' to deal with for the following reasons:

- Greater delays in both processing of applications and booking inspections to have work certified;
- Significantly more 'Requests for Information' (RFI's) than other authorities, which appear to be created by inconsistent application of the Building Code and regulations;
- Timing of RFI's is often after 15 working days of the application being submitted;
- RFI's are issued in multiple batches as opposed to all at the same time; and
- Other BCA's displayed a more collaborative approach to resolving different perspectives in design. Some members of the industry felt that TCC was an authoritarian presence with no room for other perspectives or commercial solutions on matters.

Costs of applications

- We found that across the Board, consent fees appeared to be higher than other Councils, due primarily to development contributions (often \$8k-\$9k) and use of development engineers to process applications;
- In reviewing the breakdown of particular invoices from TCC and other Councils, the individual line items other than those referred to above did not differ vastly; and
- We note also that TCC does not include any ratepayer subsidy in its funding of the Building department.

These findings are expanded on in Section 3.

Results from the most recent IANZ audit conducted in February 2016 and reviewed July 2016;

- Recording of decisions on specific applications for consent/compliance not being performed with enough detail;
- BCA Vetting Checklist not being used consistently;
- "The BCA had not been compliant with the statutory clock for processing Consents in any of the previous 23 months although they had become compliant in the previous two weeks. The BCA had not been compliant with the statutory clock for processing applications for CCC's in any of the previous 23 months although they had become compliant in the previous week."
- Buildings incorrectly categorised prior to vetting. IANZ commented this may be due to a skill shortage of reviewers;
- Competence of employees not accurately disclosed/limitations not noted;
- Procedures for managing unique identification of files were not appropriate, specifically with respect to amendments and minor variations and with the current procedures it was possible for the BCA to issue two CCC's for a Consent.

As regards the IANZ observation regarding the sudden compliance with the Statutory Clock in January 2016, our review of the statistics provided to us by TCC Building Department staff do show a gradual build up to compliance in the 5 months prior to January 2016. In querying this with the TCC Building Services Manager, he did state that there was a deliberate strategy employed to achieve compliance during this period. Staff leave was cancelled, and external resources such as Holmes Farsight were engaged to clear a back log.

We also note that the IANZ Audit Findings, or corrective actions, have been cleared to their satisfaction otherwise TCC would have lost their accreditation.

Recommendations:

Our detailed recommendations from the findings above have been disclosed in Section 3. From the above, these relate to:

- Management and timing of RFI's through process improvement.
- Engagement with applicants (customers) for compliance (the building industry and associated stakeholders).
- Reporting and application of the elapsed consenting timeframe together with the legislative requirement of the statutory 20 day time-frame.

We also recommend TCC to consider the following:

- Whether a rates subsidy would be appropriate for the Building Services team's budget.
- Ensuring that the corrective actions which were identified by IANZ in their previous audit are internally assessed prior to the subsequent IANZ review.

4.3 Probity checks and review of any close relationships which can/do create a conflict of interest for the Building Services team

Review Findings:

We undertook a detailed search of all personnel within the Asset Delivery, Building Services and Environmental Planning teams utilising the Companies Office register and other online tools we had at our disposal.

Discussions with TCC Building Services Manager as regards the outsourcing of consent processing revealed that the decisions made to outsource to external providers were made by the Building Services team and was not subject to a formal open market tender process.

For March, 2017, TCC was outsourcing 50% of its consent processing services to external providers including other councils and private companies such as Holmes Farsight, Comply New Zealand and Solutions Team. Both Holmes Farsight and Solutions Team are not accredited by International Accreditation New Zealand (IANZ) in relation to the assessment of Building Consent Applications. Comply New Zealand are accredited.

TCC are effectively outsourcing accreditation, quality and stakeholder risk to these entities. We note that the financial arrangements with these entities have not been market tested to ensure ratepayer value. We could not sight any formal TCC contract with Comply New Zealand, but given the risks associated and the financial commitments made to these private entities, we recommend that these arrangements be reviewed to ensure that Council risks are appropriately considered and mitigated under contract, and the financial arrangements provide best value for ratepayers. The TCC spend with Holmes Farsight since September 2015 is over \$1.256million, which is well in excess of the TCC Procurement Policy's market testing limit of \$100,000. The spend with Solutions Team since October 2016 is over \$189,000, which is also in excess of the TCC Procurement Policy market testing limit. We did not sight any evidence of emergency relief under the TCC Procurement Policy in relation to the market testing of both these arrangements. We also note that the insurance obligations under the contract in Appendix 3 appear weighted in favour of Holmes Farsight. This contract also stipulates that Holmes Farsight, its directors and staff are specifically named on the TCC Public Liability and Professional Indemnity policies. TCC Building Department staff are unaware as to whether this has occurred.

We examined some specific Holmes Farsight invoices, and noted that the company had performed competency assessments of TCC Building Services staff on behalf of Council. Despite not being an accredited BCA, Building Accreditation Regulations do allow Competency Assessments to be completed by an individual who has themselves been through an assessment, but is not a BCA in their own right. Again, the risk that the assessment may be completed by a person who has not been properly assessed should be mitigated under contract.

As detailed further in our report, we undertook discussions with the management of Bella Vista Homes and reviewed evidence on their files. As part of TCC's approach to resolving conflicts with Bella Vista, TCC appointed one specific inspector (from two which were suggested in correspondence between the parties) to in-charge the review of the Bella Vista consenting workflow. The inspector had, prior to his assignment to this role, engaged Bella Vista to build a house for his daughter. We sighted correspondence from the TCC Chief Executive informing Bella Vista of this arrangement prior to the inspector's assignment. Bella Vista were fully informed of this arrangement and agreed to the appointment.

Recommendations:

Our detailed recommendations from the findings above have been disclosed in Section 3. From the above, these relate to:

- Risks of outsourcing consent processing functions to external entities;
- Assessing the opportunity cost to council of outsourcing consent processing to third parties;
- Ensuring that there are no conflicts of interest in outsourcing to these parties; and
- That the outsourcing arrangements are formally reflected under contract and are market tested to ensure best value to the ratepayer.

As regards the arrangement between the TCC inspector in-charge and Bella Vista Homes, a conflict of interest exists when an employee could be affected, *or could be perceived as being affected*, by a personal or private interest in any transaction while carrying out their duties and responsibilities for TCC. We note that the conflict of interest was identified, and options as to TCC staffing were discussed with Bella Vista.

We recommend that the existence and application of the TCC Conflict of Interest Policy be reinforced with TCC Building Services staff, particularly given the significant turnover in Department staff over the past two years.

Whilst we did not sight evidence during the course of our work, other than the example above, we certainly noted a heightened conflict of interest risk surrounding the operations of the Building Services Department including:

- Record levels of divisional activity and high staff turnover;
- Outsourcing of consent processing to third parties without a formal contracting process considering risk, quality frameworks, accreditation, conflict of interest and best value amongst other elements.

4.4 Review of Bella Vista files and comparisons with other building consent/CCC/COA files

Review Findings:

Bella Vista Homes provided us with three files relating to the consents for 4, 5 and 6 Aneta Way within The Lakes subdivision. We also reviewed the TCC files in relation to these 3 properties.

The most significant themes resulting from the reviews of the TCC consent files from the properties of 4, 5 and 6 Aneta Way were as follows:

- There was significant spending on processing by development engineering due to ground conditions/works.
- Planning issues, not applicable to building consent processing appeared to hold up the processing.
- It appeared that Bella Vista had approval for certain earthworks and the actual works undertaken were considerably different to those approved. This required TCC to request site specific reports.
- One of the houses appeared to be built in a different position to that which was shown in the approved plans. This prompted TCC to require further review of the ground conditions.

The review of other comparative consent files initially began by choosing a sample of 15 from those either approved with the 2 years to March 2017 or applied for in that period and not yet approved. These were split into 3 categories of 5 as follows (with the final category expanding as required as further correspondence from complainants and interested parties was received directly during the review process):

1. Consents with significant time delays between application and issue date (greater than 300 elapsed working days in all of these cases). All of the consents below were recorded as issued within the statutory timeline required by TCC;
2. Building Consents Received but not yet issued which, on review of these consents in detail, it was found by a member of council staff sourcing the hard copy files that 3 of the 5 consents had been issued and the dates in the report had been amended at CCC stage to make changes and not re-entered; and
3. Specific Building Consents Issued which have been identified to the review team by way of correspondence from members of the industry or general public.

The most common themes that arose from these files are as follows:

- We found instances where the statutory clock under Section 48 of the Building Act was not stopped and started correctly. We sighted evidence where TCC Development Engineers had stopped the clock by issuing request for information (RFI) letters yet other TCC team members within Building Services were performing further review work on the consents while this 'stop' was in place. The consents were 57477, 54736 and 56642. It must be noted however, that we found nothing to suggest that this was an intentional method to delay the statutory clock.
- Some consent applications were lacking sufficient detail or clarity. TCC are processing consents despite this and therefore the resulting correspondence slows down the process for both parties;
- Inconsistencies in relation to assessment of consent/other compliance applications. This includes incorrect application of resource consenting issues to building consents and application of natural hazard process;
- Inconsistencies, timeliness and number of inspections;

- A lack of practical 'solutions based' approach to resolving issues. Communication does not appear to be adequate between Building Services and the Industry.

Recommendations:

Our recommendations in relation to the findings above are detailed in Section 3 with specific relation to:

- Customer/Industry Engagement
- Timeliness of consent assessment and reporting of 'real' time
- Staffing and Culture of the Building Services department

4.5 Findings of the Interview of key staff at Bella Vista and understanding around their dealings with TCC

Review Findings:

BDO met with Bella Vista Homes (Bella Vista) on 28 March 2017 at Bella Vista premises to discuss their dealings with the TCC Building Services team.

We have detailed our understanding in a chronological order of events where possible as we understand it from our discussions with Bella Vista.

On 25 August 2016, Bella Vista representatives and architect met with TCC Building Services representatives and a TCC consultant engineer on site at 4 Aneta Way to discuss a deep pile site inspection performed by a (now former) TCC Building Inspector, which was refused. The inspection was signed off subject to a subsequent geotechnical engineer's inspection on the site, to be organised by Bella Vista.

Bella Vista had provided the inspection report from its consultant engineer, but this was refused. Subsequently Bella Vista advised they would engage a Category 1 Geotechnical engineer and they did so from CMW Geoscience. The geotechnical engineer also provided certification to design and supervision by performing weekly site visits and provided reports to TCC Building Services.

Meanwhile, Bella Vista alleges that TCC Building Services placed a total stop work ban on a number of Bella Vista sites. The total number is disputed by both parties. Bella Vista allege 22 sites while the TCC Building Services Manager suggests it was only 5 sites. Building consents had been issued on all of the Aneta Way sites (5) and 3 of the Lakes Boulevard sites. Some amendments to issued consents had been requested. The amendments to consents for 4, 5 and 6 Aneta Way resulted in over 200 requests for further information (RFI's).

The stop work notice was based upon TCC Building Services concerns that the access ways to these sites were too steep. Bella Vista suggests that these access ways were approved at subdivision stage and that the requirement to reform the access ways was unsubstantiated.

Bella Vista have obtained a sworn affidavit from a TCC Building Staff member at that time. The affidavit contains the following allegations:

- A Building Services staff member was specifically instructing inspectors to recheck Bella Vista inspections,
- TCC Building Services staff members were deliberately delaying Bella Vista sites in order to place Bella Vista under commercial stress; and
- The former TCC Building Staff Member subsequently alleges that he was harassed as a result of his refusal to be a party to Council attitudes and actions.

Bella Vista further allege that the stop work notices and subsequent delays in removing them created significant commercial loss on their business and, ultimately, the purchasers of the houses under development.

Bella Vista had further discussions with TCC representatives in December 2016 to discuss the allegations and with the aim of creating a resolution to the issues raised.

Subsequently, it was suggested (amongst other items) that one inspector be appointed to resolve the issues across the sites. Two inspectors were suggested and one of these was agreed as the point of contact and his requests would be complied with regardless of the nature. It was known to both parties that the inspector appointed was having a house constructed by Bella Vista on behalf of a family member and neither party raised a conflict regarding it.

The inspector appointed commenced the role from the beginning of 2017 and within 5 weeks of commencement had resolved issues to a point where work could commence on all sites where previously, stop work notices had been issued.

BDO discussed the nature of Bella Vista's dealings with TCC Building Services with the Building Services Manager on 20 April 2017.

The findings were as follows:

- Bella Vista have found a niche in the market by purchasing sections from The Lakes Development (Carrus) which were previously single sections and sub-dividing them into two,
- Bella Vista's application of the Building Code in their design and build often does not have sufficient detail and there appears to be a lack of high level project management skill. This results in requests to amend consents once issued and issues with items which could have otherwise been resolved prior to consent being granted,
- There seems to be an ad hoc approach to build planning by Bella Vista. Bella Vista have tried to retrospectively apply changes (to plans) and proceed with changes too quickly. On a number of occasions, building plans have varied from actual builds.
- On some of the sites, earthworks have not been carried out as prescribed - additional soil has been removed than allowed by resource consent.

We have also reviewed the Bella Vista Consent files as maintained at TCC. Our comments and findings in relation to this review is outlined in Section 4.4.

Recommendations:

Our conclusions and recommendations have been shown in Section 3 under 'Bella Vista Homes'.

4.6 Findings from interviews and correspondence with other members of the building industry

Review Findings:

We interviewed a number of stakeholders from within the building industry. The key findings have been summarised within our recommendations in Section 3, particularly in relation to our first recommendation - 'Development of a Building Department Customer Service plan'

The extended details of the findings has been referred to TCC and have been broken down into specific correspondence received by BDO in relation to this review. We have not published this as we did not receive permission from the interviewees and correspondents to do so.

Recommendations:

Our recommendations have been provided in Section 3. We suggest it is important that all of the information collated is disseminated by TCC at the level they think appropriate and in addition to the recommendations provided by this report, TCC considers the common themes from the correspondence. This will enable the Building Services team to provide adequate communications to the industry on specific topics of note.

4.7 Assessment of the Geotechnical Ground Check Guidelines and its usage as a TCC policy (incl. impact on the industry).

Review Findings:

In our review of the Geotechnical interpretations adopted by the TCC, we engaged a Building Code and Compliance Expert to provide assessment assistance. Our findings are as follows;

TCC Building Department Management were unable to provide a current written policy regarding the application of Building Act matters associated with geotechnical reports.

It appears that the guidelines and associated procedures in place were mostly established to satisfy planning type matters. The information being used by Building Services was gathered from Resource Consent files in most cases.

Staff at TCC explained that, in the first instance, any reports from geotechnical type engineers provided with a Resource Consent for subdivision, would be reviewed to establish if the site was considered “good ground” (a measure of bearing capacity) for the purposes of a building platform. If this was the case, then no further engineering assessment would be required.

If the report identified that the ground was not considered “good ground”, a recognised (‘off the shelf’) foundation system could be used (for example Ribraft which is a Codemark foundation system for poor ground bearing within set parameters), and if the application for building consent identified such a system, then no further geotechnical assessment would be necessary.

If the subdivision report showed poor bearing and made no recommendation, then a site specific engineering assessment would be required.

This approach is consistent with many other Building Services teams around the country.

In saying this, where the land is also identified as being subject to a natural hazard i.e. slippage or inundation, then further assessment may well be likely given the presence of the natural hazard.

In one particular file reviewed by BDO, the earthworks undertaken on the sites exceeded the Resource Consent meaning that the original engineers report could no longer be relied on. This meant that site specific reports were required with each building consent application. This would appear a reasonable approach.

Natural hazards are complex in that the hazard itself is not identified specifically through a building consent application process.

When processing a building consent application, the Building Services team will examine Council records to establish if there are any records to show that the land is subject to a natural hazard. If the record shows the presence of any or all of the natural hazards then the Building Act provides that process that must be followed. There is no discretion in the Act as to following that process. The three possible outcomes where a hazard is identified on the land subject to a building consent is:

1. the consent is refused, in the case where the work is likely to accelerate or worsen the natural hazard or,
2. the consent is granted subject to a condition that there will be a notification on the title regarding the presence of the natural hazard or,
3. the consent is granted with no conditions/notifications, where the hazard is removed

This process is designed in many ways to inform current and subsequent owners of land subject to a natural hazard that the hazard exists.

TCC staff explained that there was a possibility that TCC may adopt Christchurch Council post-earthquake land stability/remediation classifications (TC1 -3), however this has not been actioned. There will need to be robust external review of the Christchurch model if TCC intend to adopt this approach.

It appears from our consent reviews that the Geotech interpretation outlined above is strictly applied by TCC Building Services, but it's not formally documented. Areas that may require further consideration are:

- Consistent application of the guidelines from application to application;
- Application to consents/CCC's of older properties which were built under previous regulatory regimes; and
- Balance of approach to sites where the impact of policy is insignificant or immaterial to the building work performed.

The broader finding we note is regarding the governance structure at TCC to approve policy and interpretations. Building Department Policy should go through a risk analysis and approval process to ensure not only the regulatory and commercial impacts of the policy are appropriate, but the risks of the application of the policy are considered. Key policy, such as Council's Geotech interpretations, should also be evidenced in writing and approved in accordance with an appropriate delegated authority.

Recommendations:

As stated above, Building Department Policy should go through a risk analysis and approval process to ensure not only the regulatory and commercial impacts of the policy are appropriate, but the risks of the application of the policy are considered. Key policy, such as Council's Geotech interpretations, should also be evidenced in writing and approved in accordance with an appropriate delegated authority.

4.8 Assessment of the consistency of application and governance around approval and communication of general Building Services policy to the Industry.

Review Findings:

BDO considered the following, in conjunction with the other aspects of our assessment of the Building Services function, particularly the consent file review findings, survey of TCC stakeholders and correspondence from external parties:

- Consistency of the application of policy across the Building Services Department;
- Governance of policy approval; and,
- Communication of policy to the industry.

Our findings from this are as follows:

- There doesn't appear to be consistent use of Development Engineers and we are unsure whether there is a formal plan in place to regulate this.
- There appears to be conflict between the building consent process and the resource consent/planning processes, and therefore the building consent process is being used to address other issues. We noted in multiple consents including but not limited to; 57493 and 56370 that members of the Building Services team reviewing the consents were requiring owner to comply with council guidelines as opposed to Building Act issues such as water soakage conditions and driveway gradients. It appears Section 37 certificates under the Building Act 2004 (which can be issued to accept building consent but stop work until other issues are remedied) are not being utilised to their full extent. We did not discuss with Building Services whether any formal policy was in place with regards to usage of Section 37 certificates.
- Some members of the industry have commented on potential industry-wide or trade specific forums with TCC to discuss major flash-points, and we concur and have recommended this in our TCC Customer Service Plan finding that meetings with industry stakeholders be held, but be managed carefully as we suggest it's not Council's role to be an educator of the sector.
- Information on specific items should be published with clear guidelines and potential consequences for non-compliance, however this does not appear to be happening with sufficient detail or regularity. This could be proactively performed by TCC.
- Discussions with the Building Services team suggested that there was some consideration in adopting geotechnical policies developed for other Councils.

Recommendations:

Given the nature of councils, we do not feel that it would be unreasonable for TCC to investigate the ways in which other Building Services departments respond to industry feedback and deal with similar situations.

This could be applied in particular to the geotechnical policy framework. Councils that have a history of performing well should be considered in the way they apply policy also.

It would also be advisable to incorporate this into training schedules. The ability to apply policy consistently appears to be an important part of any inspectors/processors day-to-day role.

4.9 Review BECA agreement for provision of services and consider its application by the Building Services team

Review Findings:

In reviewing the arrangement between TCC and BECA (for the provision of technical services to the Building team) we looked at the following:

Extent of market testing performed on the agreement

It appeared that the agreement with BECA to provide engineering review services to the TCC Building Services team exists under a dated agreement where upon BECA provide services to the Lakes Coast Cluster Group (LCCG). The LCCG is made up of the Councils from the following areas including Tauranga City, Taupo, Rotorua, Western Bay of Plenty, South Waikato, Whakatane, Opotiki and Kawerau. This agreement appears to have been reinforced by specific engagement letters with TCC Building Services. The latest engagement letter between TCC and BECA under this LCCG arrangement that we sighted was dated 19 August 2015.

Discussions with the Building Services Manager and GM Environmental Services, in their view, identified BECA as the only firm in the city able to provide the complete range of services and expertise on technical engineering matters required by the Building Services team under legislation. The decision to engage with BECA solely was made in the interests of efficiency and effectiveness so that TCC Building Services did not have to engage with a number of engineering firms each under separate contractual arrangements.

The process in use - how BECA is actually actioned by TCC and how their findings are applied to decisions made by TCC in the consent process

BDO discussed this with both the TCC Building Services Manager and Quality and Policy Manager and considered correspondence from GM Environmental Services. We found that:

- The TCC BCA Quality Manual which is used to ensure compliance with the Building Accreditation Regulation 2006, and Amendments 2017, outlines the process in which TCC engage contractors to perform work which is outside its scope of competencies. The Building Services Technical Manager will assess whether procurement is necessary giving account to current resources and capability, workload and future requirements. Consideration of budget, risks and any legal implications must also be given. Approval is required at General Manager Level. This was made on a case by case basis depending on the category of the building and the nature of the issue requiring technical input.
- TCC Building Services employees must have their level of individual competency assessed and up to date constantly so that work can be correctly allocated by the Senior Building Consent Officer - Processing. This impacts which work will be performed by a contractor with different competencies.
- The methodology is also outlined within the contractual agreement. It explains that TCC request assistance as necessary, providing the documentation and highlighting the relevant clauses of the Building Code/Act that the review is relevant to. BECA are then obliged from a professional ethics point of view to advise the applicant of their review of the issue. BECA then liaises directly with the applicant for comment where necessary and copies TCC in on any correspondence. Once BECA is happy that the design complies with the necessary regulatory clauses, it advises TCC formally and if the matter is a review of a professionally qualified engineer's PS1 certificate, BECA is able to issue a PS2.

The pattern of overall spend on BECA services on a year by year basis

2016-17	2015-16	2014-15
\$1.966m (to March 2017)	\$4.086m	\$3.529m

As an overall Council, TCC have spent over \$9.5m with BECA in the prior 3 years. The nature of Council's accounting records are such that we could not quantify the proportion of this expenditure that applied to the Building Services Department and the processing of Building Consents. This provides challenges and inherent risks around the management of the arrangement from a TCC Building Services Department perspective, including cost control management

The consideration of and actual usage of other engineering firms/personnel to provide such services.

Under the terms of the TCC BCA Quality Manual, referred to above, TCC Building Services also have engineers who work within the walls of TCC Building Services. These engineers are contractors and not employees of TCC. Work is referred to such engineers in the same manner in which it is referred to BECA. Where TCC Building Services employees do not have the technical expertise to process an aspect of a compliance application, this aspect is performed by an engineer with the necessary skills in the discipline related to the issue.

The contracting of engineers appears to be performed on a basis consistent with TCC employment procedures as standard.

Recommendations:

We did not find any evidence which suggested that improper practices had been undertaken in both engaging contractors and referring work within individual compliance applications. This appears to have been performed in accordance with the TCC BCA Quality Manual which refers specifically to the necessary regulations - Building Accreditation Regulation 2006, and Amendments 2017.

From our review of individual consent files, we found that there were significant processing costs associated with development engineers. In one instance, these costs were for items that did not appear to require such detailed review. This was confirmed by the assessment of our technical expert. We discussed the volume of processing being performed by contracted engineers with Building Services Manager. From these discussions, we found that he brought in some of the contractors and that it was known that they are being overused. The reason for this was due to the inexperience currently within the TCC Building Services team and some inconsistencies between individual teams within the Building Services department.

We recommend in addition to any suggestions quantified by Section 3 of this report, that TCC Building Services review the level of engagement of independent contractor engineers so as to ensure that their use be limited to those situations where absolutely necessary. The costs incurred in the BECA relationship appear to exceed the market testing threshold of the TCC Procurement Policy i.e. \$100,000, but the technical expertise exemption may have been applied in this instance, but we did not sight evidence of this exemption.

APPENDIX 1 - LIMITATIONS OF THE REVIEW PROJECT

This Review has been limited primarily to inquiries of entity personnel and external stakeholders, inspection of evidence and observation of, and enquiry about, the operation of the control procedures for a small number of transactions or events. This review is not designed to provide any level of assurance in relation to the areas included within the scope as outlined.

The engagement was performed on the basis of the following limitations:

- As a result of the inherent limitations of any internal control structure it is possible that errors or irregularities may occur and not be detected. Further, the internal control structure, within which the control procedures that we have reviewed operate, has not been reviewed and no view is expressed as to its effectiveness.
- The engagement is not designed to detect all weaknesses in control procedures as it is not performed continuously throughout the period and the tests performed are on a sample basis. Also, this engagement does not provide all the evidence that would be required in any audit.
- Any projection of the evaluation of the procedures reviewed for selected processes to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, or that the degree of compliance with them may deteriorate.

The matters raised in this report are only those which came to our attention during the course of our work and are not necessarily a comprehensive statement of all the weaknesses that exist or improvements that might be made. We cannot, in practice, examine every activity and procedure, nor can we be a substitute for management's responsibility to maintain adequate controls over all levels of operations and their responsibility to prevent and detect irregularities, including fraud. Accordingly, management should not rely on our report to identify all weaknesses that may exist in the systems and procedures reviewed, or potential instances of fraud that may exist. Findings within this report may have been prepared on the basis of management representations and should be read in the context of the scope of our work.

Tauranga City Council should assess management actions for their full commercial impact before they are implemented. This report has been prepared by BDO Tauranga for the purpose of, and with a view to access by the Chief Executive of Tauranga City Council. No responsibility to any third party is accepted as the report has not been prepared, and is not intended, for any other purpose.

APPENDIX 2 - SUMMARY OF SURVEY OF TAURANGA CITY COUNCIL EMPLOYEES

Surveys of Tauranga City Council employees

Both surveys were distributed by BDO Tauranga

Survey One

Distributed to all members of the Asset Delivery, Building Services and Environmental Planning teams.

Questions Asked:

1. How would you describe the culture of the Building Services Department?
2. Do you get enough support in your role from other members of the council team? If not, how could this be improved?
3. Do you feel you get adequate training to undertake your job efficiently? This includes any relevant TCC policies, plans and regulations and applicable Government legislation.
4. Would you say the TCC Building Services Department is adequately staffed in terms of numbers, experience and qualifications? If you answer no, please explain how you feel this could be improved?
5. As you may be aware, we have received a number of complaints from various members of the building industry. Which parts of the consent and compliance process do you think create the most disagreement between Council staff and external parties? Why?
6. What other barriers do you perceive slow the consent and compliance process?
7. Please suggest any areas where you believe the building consent and compliance process could be improved. It is important that we understand all perspectives.

Survey Two



Refined through discussion with TCC personnel, particularly Karen Lysaght (GM People & Capability). Distributed to all members of the Alpha Project, Communications, Legal, Finance, ICT and Customer Service teams.

Questions Asked:

1. How would you describe the culture of the Building Services Department and why?
2. What if any barriers are there to you or your team providing support to the Building Services department? Please explain.
3. Would you say the TCC Building Services Department is adequately staffed in terms of numbers, experience and qualifications? Please explain.
4. Please suggest any areas where you believe the building consent and compliance process could be improved.
5. What, if anything, do you consider might be a barrier to TCC improving its consent and compliance process and why?

APPENDIX 3 - COPY OF CONTRACT WITH HOLMES FARSIGHT

CONTRACT FOR SERVICES

Tauranga City Council

And

Holmes Farsight LP

Objective ID:

CONTRACT FOR SERVICES

THIS CONTRACT is made this 12th day of November 2015

BETWEEN: Tauranga City Council ("Tauranga City Council BCA");

AND Holmes Farsight Limited Partnership, being a duly incorporated limited partnership having its registered office at Level 2, 5 Customhouse Quay, Wellington ("Holmes Farsight")

(Each a Party and together the Parties)

1. The Tauranga City Council BCA engages Holmes Farsight to provide the Services, as set out in Schedule 1, and agrees to pay the Holmes Farsight, as set out in Schedule 1, and to undertake its other obligations set out in this Contract.
2. Holmes Farsight agrees to provide the Services on the terms of this Contract.
3. The following documents shall form this Contract in order of precedence:
 - This page;
 - Schedule 1 – Contract Details and Specific Terms and Conditions
 - Schedule 2 – Standard Terms and Conditions – Services (Government Model Contract – GMC Form 2 SERVICES (2nd Edition) available at: www.procurement.govt.nz)
 - Appendix One – Consent processing flow chart.
4. This Contract shall constitute the entire agreement between the Parties hereto for the provision of the Services by the Holmes Farsight. This Contract supersedes all prior agreements relating to the Services, negotiations, representations and warranties.

SIGNED for and on behalf of the

TAURANGA CITY COUNCIL by:

Signature of authorised signatory

Rebecca Perrett

General Manager
Environmental Services

SIGNED for Holmes Farsight Limited Partnership by:

Rob Tierney, Principal

In the presence of:

Signature of Witness

Greg Barnes, Engineer, Wellington
Witness Name, Occupation and City

21 Objective ID:

SCHEDULE 1

CONTRACT DETAILS AND SPECIFIC TERMS AND CONDITIONS

START DATE AND END DATE (Schedule 2, clause 1):

Start Date: 8 September 2015

End Date: 8 September 2017

HOLMES FARSIGHT'S APPROVED PERSONNEL (Schedule 2, clause 2.5):

Name: [XXX]

Position: [XXX]

Please refer to Appendix for a list of personnel

THE CHARGES (Schedule 2, clauses 2 and 3):

The Tauranga City Council BCA shall pay the Holmes Farsight for the Services provided during this Contract at a rate of:

- \$175.00 (plus GST) per hour plus Expenses as below.

The Tauranga City Council BCA will pay Holmes Farsight's actual and reasonable Expenses incurred in providing the Services provided that:

- a) the Tauranga City Council BCA has given prior written consent to the Holmes Farsight to incur the Expense;
- b) the Expense is charged at actual and reasonable cost; and
- c) the claim for the Expense is supported by a GST receipt.

No Daily Allowances are payable subject to clause 2.8 of the Specific Terms and Conditions

INVOICES (Schedule 2, clause 3.2):

Holmes Farsight will provide to the Tauranga City Council BCA an invoice for the Charges Monthly.

Invoices and statements are to be addressed to:

Accounts Payable
Tauranga City Council
Private Bag 12022
Tauranga 3143

Attention: Patrick Schofield

RA

Objective ID:

[Signature]

Email: Patrick.Schofield@tauranga.govt.nz

CONTRACT MANAGERS (Schedule 2, clause 4):

Tauranga City Council BCA's Contract Manager:

Name: Patrick Schofield
Title/Position: Technical Manager: Building
Postal Address: Tauranga City Council
Private Bag 12022
Tauranga 3143
Email: Patrick.Schofield@tauranga.govt.nz

Holmes Farsight's Contract Manager:

Name: Rob Tierney
Title/Position: Principal
Postal Address: Holmes Farsight
Level 2 Chartered Accountant House 50 Customhouse Key
P O Box 942, Wellington 6140
Email: rob.tierney@holmesfarsight.com


HOLMES FARSIGHT'S REPORTING REQUIREMENTS (Schedule 2, clause 5.6):

Report to: Patrick Schofield
Type of Report: Refer to Schedule 1, clause 5.2 of the Specific Terms and Conditions
Frequency of Report: Daily via the Tauranga City Councils online processing systems in Goget and Ozone

INSURANCE (Schedule 2, clause 8.1):

The Holmes Farsight shall take out and use reasonable endeavours to maintain for the duration of the Services:

- a) public liability insurance cover for an amount not less than \$500,000 for any one claim and in the aggregate; and
- b) professional indemnity insurance cover for an amount not less than \$500,000 for any one claim or series of claims arising out of the same occurrence and in the aggregate.

RT Objective ID: 

Holmes Farsight shall use reasonable endeavours to maintain the professional indemnity insurance up to the End Date in relation to the Services and thereafter for a further period of 6 years. For the avoidance of doubt the above insurance shall not extend for the benefit of Tauranga City Council BCA to any third party claims, loss, damages or expenses relating to Tauranga City Council BCA's liability as a BCA or otherwise. The parties acknowledge clause 2.7 in this regard.

ADDRESS FOR NOTICES (Schedule 2, clause 14):

Tauranga City Council BCA's Address for Notices:

Postal Address: Tauranga City Council
Private Bag 12022
Tauranga 3143

Attention: Patrick Schofield

Email: Patrick.Schofield@tauranga.govt.nz

Holmes Farsight's Address for Notices:

Postal Address: Holmes Farsight LP
Level 2 Chartered Accountant House 50 Customhouse Quay
P O Box 942, Wellington 6140

Attention: Rob Tierney

Email: rob.tierney@holmesfarsight.com

SPECIFIC TERMS AND CONDITIONS

1. Description of the Services

1.1. Holmes Farsight will, as an independent contractor, assist Tauranga City Council BCA with delivering Tauranga City Council BCA's building consent services by providing the following services to the Tauranga City Council BCA under this Contract ("the Services"):

- a) Review building consent applications for Tauranga City Council BCA in accordance with defined competency range, as provided by the Tauranga City Council BCA in accordance with this Contract and follow the building consent process outlined in Appendix one.
- b) Check that the application for building consent for buildings of all categories is compliant with the requirements of the New Zealand Building Code, the Building Act 2004 ("the Act") and the Building Regulations 1992, including any amendments, while following specific Tauranga City Councils (TCC) BCA Processes and Procedures as laid out in the TCC BCA manual and in following and processing each building consent application via the TCC building Consent processing Goget system, and starting and stopping the 20

227

Objective ID:

11

working day clock in both Goget and Ozone as a contractor of the Tauranga City Councils (TCC) BCA.

- c) Holmes Farsight, in assisting Tauranga City Council BCA to discharge its statutory function to process the building consent (BC), will advise Tauranga City Council BCA whether to grant and issue the building consent. Holmes Farsight acknowledges that it does not have authority to issue any building consents on behalf of the Tauranga City Council BCA and Tauranga City Council BCA specifically acknowledges the indemnities provided by Tauranga City Council BCA under clause 2 below;
 - d) Record how recommendations relating to granting or refusing applications for building consent are arrived at via the Goget building consent processing system and provide a copy (put the documents into objective), of any other relevant documents required by the Tauranga City Council BCA.
- 1.2 For the avoidance of any doubt the grant and/or issue of any and all building consents will only be made by Tauranga City Council BCA and in no event will Tauranga City Council BCA require or represent that Holmes Farsight issue or grant any consents whether in its own right or as agent for Tauranga City Council BCA.
- 2. Provision of the Services**
- 2.1 In providing the Services, Holmes Farsight shall comply with the conditions of accreditation of the Tauranga City Councils BCA Manual as disclosed to Holmes Farsight.
- 2.2 Holmes Farsight shall provide the Services within the requirements of Tauranga City Councils BCA quality assurance systems established and maintained in accordance with its building consent accreditation under section 250 of the Act as disclosed to Holmes Farsight. Holmes Farsight shall, as requested and during an annual review provide evidence that it has flowed TCC's BCA accreditation requirements under section 250 of the Building Act 2004.
- 2.3 Holmes Farsight shall, at its cost, maintain compliance with any reasonable competency requirements of Tauranga City Council BCA so that Tauranga City Council BCA complies with its own building consent authority accreditation under section 250 of the Act (especially to make certain all Holmes Farsight processing staff meet and maintain any competency requirements that Tauranga City Council BCA require to ensure compliance with regulation 9 of the BCA Regulations 2006). Holmes Farsight will make certain at their cost that all their processing staff meet the requirements imposed by Tauranga City Council BCA's contractor systems to satisfy obligations under regulation 18 (being to ensure that Tauranga City Council BCA contractors hold an appropriate technical qualification).
- 2.4 Holmes Farsight will inform the Tauranga City Council BCA if at any time it becomes aware Holmes Farsight's actions may affect the Tauranga City Council BCA accreditation, or if Holmes Farsight fails to meet, or is at risk of failing to meet, any conditions of Tauranga City Council BCA's accreditation requirements.
- 2.5 In providing the Services, Holmes Farsight shall only be required to exercise the degree of skill, care, and diligences normally expected of a competent professional. Holmes Farsight will only allocate work to its building consent processing staff that

RT

Objective ID:

9

hold the required competency (or otherwise ensure that any other staff so engaged are appropriately supervised by persons having such competency) so that Tauranga City Council BCA can comply with its obligations under regulation 9 of the BCA Regulations 2006. Clause 2.3(c) of Schedule 2 (Standard Terms and Conditions) is hereby deleted.

- 2.6. Holmes Farsight is required to be familiar with and provide the Services within the requirements of the Tauranga City Council BCA's quality assurance systems established and maintained in accordance with the Tauranga City Council BCA's building consent accreditation under section 250 of the Act.
- 2.7. The Services are provided on the basis that in all cases Tauranga City Council BCA assumes all liability for the discharge of its statutory and regulatory obligations as a BCA. The Services do not include the extension of Holmes Farsight's professional indemnity insurance cover for any claims made against Tauranga City Council BCA or relating to Tauranga City Council BCA's statutory activities as a BCA.
- 2.8. Holmes Farsight will provide the Services to Tauranga City Council BCA from its offices in Wellington, provided that if requested by Tauranga City Council BCA Holmes Farsight will attend Tauranga City Council BCA premises in Tauranga subject to reasonable notice and reimbursement of all Holmes Farsight's reasonable travel and accommodation costs and disbursements.

3. Timing

- 3.1. Holmes Farsight will perform the Services to time frames agreed to by the Tauranga City Council BCA (refer to processing flowchart in appendix one). With regard to specific large C2 & C3 consents and, in the absence of an agreed time frame, within 15 Business Days of receiving the application from the Tauranga City Council BCA to enable the Tauranga City Council BCA to issue the building consent within the statutory time limits.

4. Confidentiality

- 4.1. Holmes Farsight shall ensure that it keeps all information about the Tauranga City Council BCA and applicants confidential throughout the provision of the Services. Information provided by or about the Tauranga City Council BCA shall not be released to external parties without the prior written permission of the Tauranga City Council BCA. Holmes Farsight will refer any request for disclosure of information (including any requests for information made under the Local Government Official Information and Meetings Act 1987) held by it for the purpose of this Contract, or for the provision of the Services under this Contract, to the Tauranga City Council BCA for a response.

5. Reporting

- 5.2. Holmes Farsight shall provide the Tauranga City Council BCA with weekly reporting which shall include:
- a) details of the Holmes Farsight's weekly capacity;
 - b) the number of consents reviewed on behalf of the Tauranga City Council BCA in that week; and
 - c) the status of current building consent applications being reviewed, including:
 - i. the number of days progress against the statutory time limits; and
 - ii. The number of applications suspended the reasoning and the number of days each application has been suspended.
- 5.3. Notwithstanding clause 5.1(c)(ii) above, where the reviewing of any application provided to Holmes Farsight under this Contract is suspended for any reason, Holmes Farsight shall immediately upon the suspension shall stop the processing clock in Goget and Ozone, (and in no event not later than 1 Business Day after the suspension) advise the Tauranga City Council BCA (using the Goget processing system of the suspension, including the reasoning for the suspension. The Tauranga City Council BCA shall have the right, in its sole discretion, to take back any application which has been suspended in order to review and process such application(s) itself.
6. **The Tauranga City Council BCA's obligations**
- 6.1. The Tauranga City Council BCA will use all reasonable endeavours to provide Holmes Farsight with a reasonable number of six applications for building consent per week (averaged over a 6 week period). However, the Tauranga City Council BCA does not guarantee the minimum number of consents that will be provided to Holmes Farsight, either per week or under this Contract.
- 6.2. The Tauranga City Council BCA shall undertake audits of building consent applications which Holmes Farsight has processed and granted. Any processing errors by Holmes Farsight identified will be rectified by Holmes Farsight at its expense subject at all times to the limits of liability specified in this Contract and on the basis that this shall not extend to any matters beyond amendments or revisions to information or advice provided to Tauranga City Council BCA supporting the application. Holmes Farsight at its expense shall implement reasonable measures to avoid reoccurrence of errors. Such steps shall include but are not limited to:
- a) improved quality assurance processes; and
 - b) Coaching and training of Holmes Farsight's staff involved in the performance of the Services.
- 6.3. The Tauranga City Council BCA will provide Holmes Farsight with all the application documentation (including any plans, specifications and the Project Information Memorandum) via objective to enable Holmes Farsight to discharge its obligations under this Contract.
- 6.4. The Tauranga City Council BCA will advise Holmes Farsight regarding the following matters for each application for building consent:
- a) the expiry date of the statutory timeframe for each application for consent; and
 - b) Any Certificate of Title consent notices that could affect the building work.
7. **Insurance and Indemnities**

RT

Objective ID:

10

- 7.1. Despite any provision of this Contract, Tauranga City Council BCA acknowledges and agrees that Holmes Farsight only assumes liability to Tauranga City Council BCA as described in clause 8 below and shall not assume liability to any third party. Tauranga City Council BCA will indemnify and hold harmless Holmes Farsight and its directors, officers, agents and employees from and against all third party costs (including legal costs), claims, liabilities, losses, damage and expenses directly or indirectly arising from or relating to the Services. This indemnity will not apply in cases of wilful breaches of this Contract, criminal or dishonest acts by Holmes Farsight.
- 7.2. Tauranga City Council BCA will ensure that Holmes Farsight, its directors, officers, agents and employees will all be an additional insured under all applicable insurance policies held by the Tauranga City Council BCA, for the purpose of the provision of the Services, including those policies applicable to professional negligence, general liability and director & officers' liability (or such equivalent applicable to Tauranga City Council BCA as a local authority). Tauranga City Council BCA will provide confirmation of such cover on request by Holmes Farsight.
- 7.3. Tauranga City Council BCA will ensure that the Tauranga City Council BCA's own insurance policies will be available as primary cover and Holmes Farsight may require that such insurance cover be exhausted before having recourse to its own insurance policies.
- 8. Limitation of Liability**
- 8.1. Holmes Farsight is only liable to Tauranga City Council BCA for reasonably foreseeable claims, damages, liabilities, losses or expenses arising directly from a breach of this Contract by Holmes Farsight.
- 8.2. Holmes Farsight shall not be liable to the Tauranga City Council BCA under this Agreement for the Tauranga City Council BCA's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.
- 8.3. The maximum aggregate amount payable to Tauranga City Council BCA, whether in contract, tort or otherwise, in relation to any and all claims, damages, liabilities, losses or expenses relating to or in connection with this Contract or the Services, is five times the Fee (exclusive of GST and disbursements) with a maximum limit of \$NZ250,000
- 8.4. If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a third party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
- 9. Intellectual Property**
- 9.1. As Holmes Farsight will be using the systems and process of Tauranga City Council BCA to deliver the Services clauses 12.4, 12.5 and 12.6 of Schedule 2 (Standard Terms and Conditions) are hereby deleted and Tauranga City Council BCA indemnifies and holds Holmes Farsight harmless from any costs (including legal



Objective ID:



costs), claims, liabilities, losses, damage and expenses arising from any third party claim that the use of such systems and processes infringes a third party's rights.

10. Invoicing

- 10.1. Each invoice shall include the following information:
- a) the time taken to review each consent application upon completion of the review; and
 - b) The hours utilised, rate per hour in accordance with this Contract, total cost and specify all other costs on charged.
- 10.2. Payment will be effected by Electronic Funds Transfer (EFT) (direct credit).
- 10.3. The Tauranga City Council BCA shall be entitled to query any aspect of Holmes Farsight's invoice. Holmes Farsight shall fully and promptly co-operate with the Tauranga City Council BCA to resolve any such query. While any matter is being queried, Holmes Farsight shall continue to supply the Services without interruption or delay. The Tauranga City Council BCA will make payment of the undisputed portion of the invoice.
- 10.4. Holmes Farsight shall only invoice the Tauranga City Council BCA for actual and reasonable hours spent on providing the Services, including for any meetings, reporting or review requirements required under this Contract and any other expenses Holmes Farsight is entitled to claim under this Contract. Holmes Farsight will use best endeavours to liaise with the Tauranga City Council BCA on any application where the provision of Services may exceed any of the following timeframes by more than 50%:
- a) 6 hours for a Residential 1 building consent application;
 - b) 8 hours for a Residential 2 building consent application;
 - c) 12 hours for a Residential 3 building consent application;
 - d) 12 hours for a Commercial 1 building consent application;
 - e) 15 hours for a Commercial 2 building consent application;
 - f) 20 hours for a Commercial 3 building consent application; and
 - g) Or as agreed with the Tauranga City Council BCA for a very large Commercial 3 building consent application.

11. Communications

- 11.1. Monthly communications with key representatives from the Tauranga City Council BCA and Holmes Farsight (i.e. teleconferencing, web cam or by agreement, at the Tauranga City Council BCA's premises) shall occur to discuss topical issues. A summarised report of important outcomes shall be captured, reviewed and agreed by both Parties.
- 11.2. Holmes Farsight shall only communicate with applicants to the extent required to review consent applications in accordance with this Contract. All such communications shall be captured and recorded on the relevant consent application file in Goget and Objective. Holmes Farsight shall not correspond with third parties (other than the applicants), and any communication from such third parties to the Holmes Farsight must be referred to the Tauranga City Council BCA for a response.

RT

Objective ID: 

- 11.3. All documents will be in hard copy or electronic format. All courier costs will be invoiced back to the Tauranga City Council BCA.
- 11.4. Both Parties during the period of this Contract will work together to make the transfer of information between them as efficient and effective as possible. Any agreed efficiencies will not trigger the need for a new contract between the Parties.

12. Health and Safety

- 12.1. Holmes Farsight must take all practical steps to ensure Holmes Farsight's safety and the safety of any other persons on any relevant work site. Holmes Farsight must comply at all times with any legal requirements with regard to health and safety including the Health and Safety in Employment Act 1992, including any amendments. Holmes Farsight must abide at all times by any safety procedures, including the safe use of equipment on the site on which the Services are provided. Holmes Farsight must report to the Tauranga City Council BCA any accident or injury that arises out of, or in the course of, completing the Services under this Contract as soon as is practicable after the accident or injury occurs.

13. Dispute

- 13.1. If any dispute arises in connection with this Contract or its subject matter, either Party may give written notice of the dispute ("Dispute Notice") to the other Party, and the following shall apply:
- a) The Parties shall endeavour to resolve the dispute within fifteen (15) Business Days of the Dispute Notice through negotiations between the Parties representatives and senior managers if required.
 - b) If the dispute remains unresolved for a further period of five (5) Business Days after the dispute has been referred to the senior managers of the Parties, either Party may by written notice require that the dispute be submitted for mediation by a single mediator agreed by the Parties or, if no agreement can be reached within two (2) Business Days of such notice, by a mediator nominated by the President of the New Zealand Law Society or the President's nominee.
 - c) The mediator will determine the procedure and timetable for the mediation. The costs of the mediation will be shared equally by the Parties.
 - d) If within two (2) Business Days following the mediation, the dispute remains unresolved, either Party may pursue its legal rights (including commencing any Court proceedings or, where the Parties agree, referring the dispute to arbitration).
 - e) All proceedings and disclosures in the course of the mediation will be conducted and made without prejudice to the rights and position of the Parties in any subsequent legal proceedings.
 - f) A signed mediation settlement agreement may be used in evidence in subsequent legal proceedings.
 - g) Where the Parties agree that the dispute be referred to arbitration under clause 10.1(d), a single arbitrator agreed by the Parties shall be appointed or, if no agreement can be reached within two (2) Business Days from the date of the agreement to refer the matter to arbitration, by an arbitrator nominated by the President of the New Zealand Law Society or the President's nominee.

RT

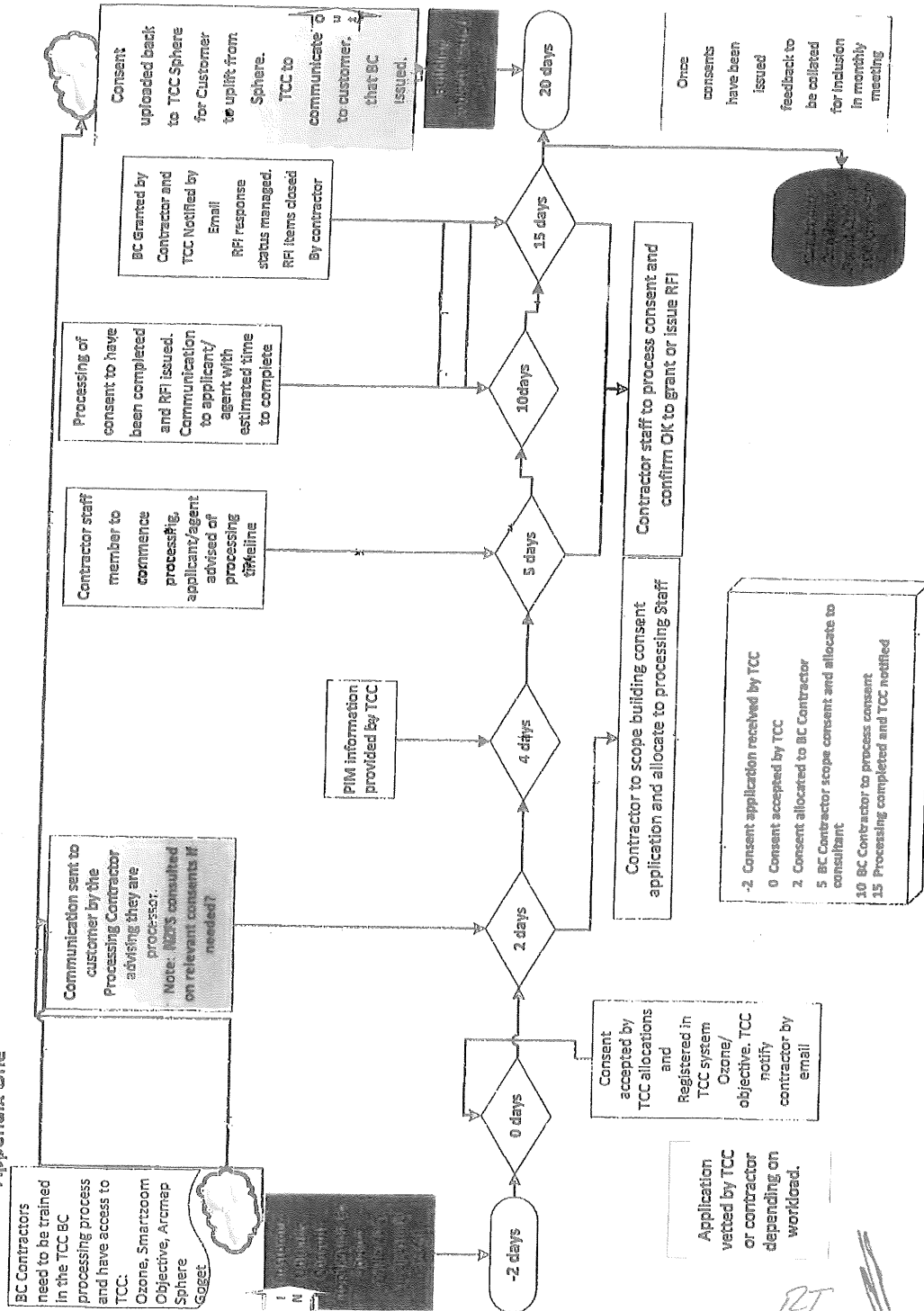
Objective ID:



- 13.2. Holmes Farsight must continue to perform the Services during any dispute until it is resolved, unless the Tauranga City Council BCA directs otherwise, and the Tauranga City Council BCA continue to pay for the Services (other than any payments withheld in relation to the matter in dispute).
- 13.3. Neither Party may commence any legal proceedings in relation to a dispute until the process in clause 10.1 is completed, provided that nothing in this clause 10 restricts or limits the right of either Party to seek urgent injunctive relief, or limits or any right to terminate or suspend this Contract for Services.
- 14. Renewal of Contract**
- 14.1. Six months prior to the End Date stated in this Contract, the Parties will review the Contract and agree on whether this Contract will be renewed, and the period of renewal, if any. If no agreement is reached then this Contract will expire on the End Date unless terminated earlier in accordance with its terms.
- 15. Termination**
- 15.1. Either party may terminate this Agreement on seven days' notice to the other without prejudice to any rights that may have accrued up to the date of termination.
- 16. General**
- 16.1. Holmes Farsight shall notify the Tauranga City Council BCA (weekly prior to receiving any applications for that week; and/or a maximum notice period of within one (1) Business Day of receipt of any application if it does not have the capacity to provide the services that week. For the avoidance of doubt Holmes Farsight shall not be obliged to process any applications that exceed the minimum referred to in clause 6.1.
- 16.2. Holmes Farsight will provide the Services and will not sub-contract or delegate any of its rights or obligations without the prior written consent of the Tauranga City Council BCA to be given in the Tauranga City Council BCA's sole discretion.
- 16.3. This Contract may be amended or modified by agreement between the Parties. Any changes shall be made in writing and signed by the Tauranga City Council BCA and Holmes Farsight not less than one month before such changes are required to take effect unless expressly agreed otherwise.
- 16.4. The following clauses will survive termination or expiry of this Contract: 4,7,8,9,13
- 16.5. The parties agree that nothing in this Contract constitutes the parties being in partnership or the Holmes Farsight acting as agent of the Tauranga City Council BCA. The Tauranga City Council BCA assumes all responsibility and legal liability associated with the exercise of its statutory and regulatory functions as a Building Consent Authority under the Building Act 2004 and associated regulations.

*RT*Objective ID: 

Appendix One



APPENDIX 4 - REVIEW SCOPE LETTER



Tel: +64 7 571 6280
Fax: +64 7 571 6281
www.bdo.co.nz

Level 1
The Hub
525 Cameron Road
PO Box 15660
Tauranga 3144
New Zealand

20 February 2017

Mr G Poole
Chief Executive
Tauranga City Council
91 Willow Street
TAURANGA 3143

Via Email
PRIVATE AND CONFIDENTIAL

Dear Garry

ENGAGEMENT LETTER - BUILDINGS SERVICES REVIEW

Following our recent meeting, we are writing to outline the terms of an engagement to provide Tauranga City Council and yourself ("TCC", "Council") with a review of certain aspects relating to the culture, leadership and operation of Council's Building Department, as outlined in the scope section below, following the receipt of complaints from external parties.

The Scope of this Engagement

The scope of this engagement is to undertake a review and provide observations and recommendations in relation to the following key scoping aspects. An overview of the key activities to complete each scoping aspect is also indicated, but this may not be the final activity list and is subject to your review.

Scope Element	Approach
1. Review the Culture and Leadership of Council's Building Department	<p>Interview current employees, immediate past employees and other key stakeholders, such as property developers, and consider their observations as regards the culture and leadership of the Building Department, in respect of their engagement with other business units as well as external customers.</p> <p>Consider the culture, leadership and practices of the Department against the operations of other Building Departments for Councils around the Country.</p> <p>Conduct probity checks of key Building Department employees, particularly consent processing and inspection staff.</p>
2. Review the dealings of Council's Building Department with Bella Vista Homes	<p>Review a sample of Bella Vista project files and review the "cradle to grave" documenting and approval of Council's decisions and consents in relation to the projects.</p> <p>Interview key staff at Bella Vista Homes and document observations regarding their dealings with Council.</p> <p>Interview other similar Property Developers and document observations regarding their dealings with Council.</p>
3. Review the formulation, approval and application of Council's GeoTech policy	<p>Consider the process and rationale behind the formulation of the Geotechnical Ground Check Guidelines, the development, approval and engagement process, if any, as Council policy.</p> <p>Consider the consistency of policy as applied generally, and the governance around developing, approving and communicating policy in the TCC Building Department.</p>

BDO New Zealand Ltd, a New Zealand limited liability company, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. BDO New Zealand is a national association of independent member firms which operate as separate legal entities. For more info visit www.bdo.co.nz.

The output from the above work will be a report addressed to you outlining our observations in relation to each step, and our recommendations for improvement. Our report is a review, and does not constitute an audit of the operations of Council's Building Department.

Proposed BDO Team

The engagement team will be led by me as Managing Partner of BDO Tauranga. I will be assisted by Andrew Sloman, the leader of BDO's Risk Advisory Service line nationally. I will have ultimate responsibility for ensuring our client service levels are of the highest quality.

We will be assisted by John Tait, as a subject matter Building Code and Compliance expert. As you know, John is a certified IANZ assessor of Building Compliance Authorities, and works with numerous Councils around the country. John's knowledge and expertise will be key when we review the Cultural and Leadership aspects of Council's Building Department, together with assessing the technical aspects of Council's dealings with Bella Vista in Scope Step 2.

Council's Responsibilities

It is understood and agreed that:

- Council will provide information requested to complete the engagement;
- BDO will be required to discuss the operation of Council's Building Department with management and staff of Council;
- We will interview external parties, including property developers and other stakeholders of TCC, only with the expressed authority of and facilitation by Tauranga City Council;
- BDO's report will be based on information outlined to us, including discussions we may have with the management and staff of Council, and the external stakeholders as approved; and
- TCC is ultimately responsible for systems and internal controls over the operations of Council's Building Department and associated legislative compliance.

Limitations on the Scope of Our Work

Our work will consist of performing the procedures described in The Scope of this Engagement paragraph. We will inevitably be relying on data and information provided to us by you and on enquiries and discussions with you and your staff. We will not be in a position to verify the accuracy of the data or the information and explanations provided to us by you.

In no circumstances shall we be liable, other than in the event of our bad faith or willful default, for any loss or damage, of whatsoever nature, arising from information material to our work being withheld or concealed from us or misrepresented to us by the Councillors, employees, or agents of Tauranga City Council or any other person of whom we may make enquiries, unless detection of such withholding, concealment or misrepresentation should reasonably have been expected because the fact of such withholding, concealment or misrepresentation was evident without further enquiry from the information provided to us or required to be considered by us pursuant to the scope agreed under this letter. This clause, and any assessment of our work made pursuant to it, will have regard to our agreed scope under this letter.

Timing and Proposed Fees and charges

We anticipate performing this work in February and March 2017, in accordance with your reporting requirements. Based on the above scope, completion of the review and drafting our report over a 4 week timeframe is reasonable, however will be subject to availability of information and access to key personnel.

We estimate, based on our charge out rates, this assignment will be in the vicinity of between \$45,000-\$49,000, plus GST and excluding disbursements. This engagement is being performed by senior members of our team given the sensitivities. We will contract directly with John Tait, and his estimated costs have been included in the fee above.

Fees and disbursements will be billed on the delivery of the first draft of our report.

BDO Standard Terms and Conditions of Business

We accept this engagement on the basis that our BDO Standard Terms and Conditions of Engagement, as set out on the next pages, will apply to this work and govern our relationship with you.

This letter is the "Engagement Letter" as defined by our BDO Terms and Conditions of Engagement.

Use of the output

The report will be provided solely for the use of yourself and Council's Governance Team, and should not be distributed to any party without our prior consent nor may extracts or quotations be made without our express prior written approval.

Confirmation

If you accept the terms and conditions of this engagement as outlined in this letter, please sign the enclosed copy and return it to us.

Conclusion

We trust the above meets your requirements. Please contact me if you would like to discuss any aspect of this proposal further, or to clarify any aspect of the approach. I can be reached on 07 571 6280.

Yours sincerely
BDO Tauranga

Fraser Lellman
Partner

Acknowledgement

The terms and conditions of the above engagement letter have been read and understood and I am authorised to accept them for and on behalf of Tauranga City Council.

Signed: 

Name: G. K. Poole

Position: Chief Executive

Date: 27/01/17

Appendix: BDO Auckland Standard Terms And Conditions of Engagement

A. Terms of Appointment

The engagement letter and these terms ('the Agreement') contain our understanding of your requirements, and the terms of this agreement and conditions of our appointment to provide assurance services to you. These terms form part of and must be read in conjunction with our attached letter of engagement. If there is any conflict between these terms and the engagement letter, the engagement letter terms will prevail. This Agreement records the services we will provide you. If you require any additional services, we must agree in writing to provide those services in a further letter of engagement (which will specify the scope of the further appointment).

B. Application

These terms and conditions apply to work performed for you by BDO Auckland. In the terms below 'BDO' is used as a generic term to describe BDO Auckland, unless otherwise specified.

If any item in these terms and conditions is at variance with what is specified in the engagement letter, then the terms specified in the engagement letter will take precedence.

C. Whole agreement

This Agreement:

- Constitutes the entire understanding and agreement of the parties relating to the matters dealt within it. Neither party may rely on any arrangement, understanding or agreement, which is not expressly set out in this letter and its appendices;
- Supersedes and extinguishes all prior agreements, statements, representations and understandings whether verbal or written between us relating to the matters dealt with in this engagement letter. This letter and its appendices shall not be amended, modified, varied or supplemented except in writing signed by both parties.

D. Interpretation

In this Agreement, 'we', 'our', and 'us' refer to BDO Auckland and 'you' and 'your' refer to all those entities listed on the attached engagement letter.

E. Commencement and termination

This engagement will commence when we receive, at the BDO address as detailed on our letterhead, a copy of this letter signed on your behalf, and it shall continue in force until terminated by either party. You or we may end this agreement by giving 30 days notice in writing.

Termination will not affect any accrued rights of a party including your obligation to pay our fees for all services performed to the date of the notice of termination.

Any of the terms and conditions of this Agreement, which are intended to apply after termination, will continue to apply.

F. Services

BDO will provide the services as specified in the engagement letter or any subsequent engagement letter. Any material change to the services provided is to be documented in a supplementary or replacement engagement letter.

G. Our Advice

Any advice given will be based on our understanding of the statute, case law and practice at the time of its issue and any subsequent changes in the law and practice may

therefore affect its conclusions. We are under no legal obligation to update the advice for subsequent changes in law, and do not undertake to do so. Therefore, you should ask us to confirm advice previously given if you want to repeat a transaction or if an action that we have advised on is delayed.

It is our policy to set out in writing (which may be by email) any advice on which you may wish to rely. In many cases, our advice will include a summary of our understanding of the facts or background on which our advice is based. It is important that you tell us if you think this summary does not accurately reflect the facts since our analysis of the transaction and the resulting advice may then change.

We intend to provide a prompt and efficient service in giving advice. In many instances, advice is requested ad hoc initially and very often orally with no subsequent written confirmation being sought. In these circumstances, we will accept no liability for your reliance on any oral advice on technical matters, until we have subsequently reconfirmed that advice in writing.

H. Information and documents

You should let us know about any changes to your circumstances that may affect our engagement, so that the implications of these changes on our current engagement can be properly assessed. Where possible, you should let us know your intentions before making any such changes, as we may be able to advise you of a more beneficial course of action.

In regard to documents such as (but not limited to) company constitutions, trust deeds, partnership agreements and shareholder agreements it is necessary for us to hold copies of these documents to ensure that our engagement complies with the terms of these documents. We will need to review any relevant document as part of the engagement and you will need to provide us with details of any changes to or replacement of any documents that have a potential impact on our engagement.

We will not be responsible or liable if information we need to accurately carry out our tasks is withheld or concealed from us or incorrectly represented to us.

I. Fees

Fees are payable within 14 days of receipt of our invoice, except where the engagement letter states otherwise. Please tell us immediately if you receive an invoice on which you have any questions or which you anticipate will not be paid within 14 days. We reserve the right to charge interest on overdue amounts.

We will be entitled to require payments on account once significant amounts of time have been incurred. Expenses, including travel and subsistence, and goods and services purchased on your behalf, will be charged to you.

Unless otherwise specifically agreed in the engagement letter, fee estimates given by BDO are only estimates and the fees may be adjusted if the work has to be extended for reasons beyond our control. We will let you know if we consider the estimate is likely to be exceeded.

On termination of the engagement, we will be entitled to our fees incurred until the date of termination.

In the event of default in payment by you, you shall pay all costs incurred by BDO, including costs on a solicitor-client basis and debt collector's costs incurred in the recovery or attempted recovery of outstanding moneys

and enforcement of any of the terms contained in this Agreement.

J. Right of set-off

In the event of default in payment to us by any entity for which this engagement letter incorporates ('you'), you or any entity in the same corporate group as you, severally shall pay the amount in default and all costs incurred by us, including our adviser's costs on a solicitor-client basis and debt collector's costs incurred in the recovery or attempted recovery of outstanding moneys and enforcement of any of the terms contained in this letter of engagement.

K. Electronic communication

During the engagement, we may wish to communicate electronically with each other. However, electronic transmission of information cannot be guaranteed to be secure or virus free and information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. We each agree to use commercially reasonable procedures to check for the then most commonly known viruses before sending information electronically, but we recognise that these procedures cannot be a guarantee that transmissions will be unaffected by hazards.

We confirm that we each accept these risks and authorise electronic communications between us. We will each be responsible for protecting our own systems and interests in relation to electronic communications. Neither you nor us (in each case including our respective partners, directors, employees, sub-contractors or agents) will have any liability to each other on any basis, whether in contract, tort (including negligence) or otherwise, in respect of any damage, loss or omission arising from or in connection with the electronic communication of information between us or our reliance on the information.

From time to time we distribute firm newsletters and other material which contain topical and informative business, accounting and tax related issues. We do this free of charge as part of our ongoing service to clients.

By signing the confirmation attached to this engagement letter you are expressly consenting to the receipt of the firm's newsletter and other business, accounting and tax related information by way of email. In addition you are expressly waiving the requirement for us to include a functional unsubscribe facility in the principal message by which such information is transmitted.

L. Liability

BDO will perform the engagement with reasonable care and skill and acknowledges that it will be liable to you for losses, damages, costs or expenses ('losses') caused by its negligence or wilful default, subject to the following provisions:

- BDO shall have no other liability of any nature, whether in contract, tort or otherwise, for any losses, whatsoever and howsoever caused, arising from or in any way connected with this engagement;
- BDO will not be liable if such losses are due to the provision of false, misleading or incomplete information or documentation or due to any acts or omissions of any person other than BDO;
- The aggregate liability of BDO, whether to you or any third party, of whatever nature, whether in contract, tort or otherwise, for any losses (including interest) whatsoever and howsoever caused arising from or in any way connected with this engagement

will be limited to the amount of direct damage, loss, expense or costs actually suffered by you as a result of the event that gave rise to the liability and the maximum amount of such liability will not exceed five times the fee paid for the particular service giving rise to the claim. For the purposes of this clause, direct losses or damages excludes:

- Any losses or damages arising from delay, increase in operating costs, loss of profit, use, production, income, business data, contact or goodwill of any person;
 - Any indirect or consequential loss, and
 - Any loss resulting from liability to any third party
- Nothing in this section shall impose on BDO any liability additional (in amount or nature) to that which BDO would have if this section were not present. Furthermore, the presence of this section will not preclude any defence which BDO would have if this section were not present.

Nothing in this agreement shall exclude, restrict (or prevent suit in respect of) any liability arising from fraud or dishonesty or other liabilities which cannot lawfully be limited or excluded.

Unless and to the extent that they have been finally and judicially determined (including by the conclusion of any appeal) to have been caused by the fraud, wilful default or negligence of any of the BDO Parties, you will indemnify on demand and hold harmless the BDO Parties against all actions, claims, proceedings, losses, damages, costs and expenses whatsoever and howsoever caused arising from or in any way connected with this engagement.

You agree to indemnify BDO against all liabilities, including litigation costs, resulting from reliance on the information supplied by or obtained with the knowledge of yourself and failure by yourself to disclose material information, except to the extent that the losses arise from negligence by BDO.

For the purposes of this agreement 'BDO Parties' is defined as BDO Auckland, and all partners, employees and agents of BDO Auckland, along with all such parties' successors and assignees. You will not bring any action against any of the BDO Parties, except for the specific entity you have engaged for this assignment. The BDO Parties may (individually or collectively) in their own right enforce the provisions of this agreement which refer to the BDO Parties.

If any BDO Member Firm other than BDO Auckland, whether located in New Zealand or in any other jurisdiction (each such firm, an "Other Firm"), performs any of the services to which this Agreement applies, you agree that BDO Auckland (as the sole contracting party with you pursuant to this Agreement) shall have sole liability to you for both its acts and/or omissions and for all acts and/or omissions of any Other Firm providing services to you pursuant to this Agreement. You agree that you shall bring no claims or proceedings of any nature whatsoever (whether in contract, tort, for breach of statutory duty or otherwise) against any Other Firm in any way arising from, or in respect of, or in connection with, the services provided under this Agreement or this Agreement itself.

You further agree that any Other Firm whom we may involve in the provision of services under this Agreement (and any partners, directors or employees of any such Other Firm) shall have the right to rely on and enforce

this clause L of these terms as if he, she or it were a party to this Agreement in his, her or its own right and the provisions of the Contracts (Privity) Act 1982 shall apply for his, her or its benefit accordingly.

You agree that you have fully considered the provisions of this section and all the other provisions of this agreement and that they are reasonable in the light of all the factors relating to this engagement.

If any terms or provisions of this agreement (or parts thereof) are or become invalid, illegal or unenforceable, the remainder shall survive unaffected to the fullest extent permitted by law.

We have also agreed with you that this limitation of liability extends to both the engagement contained in this Agreement and any variation or addition to it, and to claims arising from breach of contract, negligence or in any other way.

M. Confidentiality

We will not disclose any confidential information that we obtain in dealing with your affairs to any other person without your permission except as required by law, regulations, Court or arbitration proceedings, regulatory authorities, professional duty or as is necessary to protect our own legitimate interests.

Where appropriate, we use the credentials obtained in doing work for clients in internal and external publicity material. We will always ask your permission before publicly claiming credit for our work for you. However, unless you expressly forbid us doing so, we may refer to our work for you in proposals (or other similar submissions to prospective clients).

You acknowledge our legal obligations to keep confidential any relevant information obtained from any other client (or potential client) and you agree that, if we have or obtain any such confidential information, we will not disclose it to you or make use of it for your benefit.

You will not disclose to third parties any confidential information relating to us or our processes, ideas, concepts or techniques; unless you are required to do so by law. You acknowledge that our processes, concepts and techniques are our property and are also confidential information.

Along with other chartered accountancy firms, our audit and accounting practices are subject to review by the Financial Markets Authority and the Practice Review Board of the New Zealand Institute of Chartered Accountants. In addition our files are also subject to review by BDO New Zealand and BDO International. In these reviews we are required to produce any document or other material in our possession or power and to co-operate in the review process. The work we perform for you may be selected by the examiners for their review. If so, they are obliged to keep all information confidential.

Requests by third parties for access to our working papers, including those made by parties entitled by law to compel us to provide such access, will be discussed with you and your consent obtained before access is given, other than by operation of law.

The obligations of confidentiality set out in this clause will continue after termination of our engagement.

N. Ownership and retention of documents

All papers and documents we produce in the course of our work for you will remain the property of BDO and constitute confidential information. We also retain the

copyright and all intellectual property rights in all original material provided to you.

While some documents may legally belong to you, we reserve the right to destroy correspondence and other papers once we believe they need no longer be retained for legal reasons, unless you write to us telling us not to do so.

O. Third party rights

Our advice to you will be specific to your presented circumstances and intentions and therefore will not necessarily be suitable for use at a different time, in different circumstances or to achieve other aims or for the use of others. Accordingly, you should only use the advice for the intended purpose, and no other person is entitled to rely on the advice for any purpose. We shall have no responsibility or liability towards any person other than the addressee.

P. Our employees

From time to time, our employees may work from your premises. You agree to comply with all statutes, bylaws, codes of practice and legal requirements which it is ordinarily required in respect of your own staff.

You acknowledge our employees are an integral part of our business. Accordingly, you agree that you will not offer or induce any of our employees to end their employment with us without the prior written permission of a BDO partner. You also agree not to procure or assist anyone else to do this.

In addition to breaching this Agreement, you acknowledge that if you offer or induce any of our employees to end their employment with us you may be assisting or procuring a breach of a restraint of trade agreement between BDO and the employee.

If you directly employ any of our employees who have worked on your engagement within a period of twelve months after completing an audit engagement at your premises, you agree to pay an introduction fee of 100% of the staff member's annual gross salary as paid by us immediately prior to their termination of employment inclusive of any benefits (plus GST). You acknowledge that this is a genuine pre-estimate of our loss.

Q. Health and safety

The Health and Safety at Work Act 2015 obliges BDO to take all practical steps to ensure the health and safety of its staff engaged on any assignment. You and BDO will be mutually responsible to ensure the safety of BDO staff and to see no harm is caused to them in the client workplace. You shall ensure the Act is fully complied with when BDO staff visit client sites. Contact with your health and safety representative could involve a safety briefing at the beginning of the assignment to those involved, regarding work hazards which BDO may be exposed to on your site, management of the hazards, awareness of the accident reporting procedures and emergency procedures.

R. Ethical and practice guidelines

We will observe the ethical guidelines of the New Zealand Institute of Chartered Accountants and accept instructions to act for you on the basis that we will act in accordance with those guidelines.

S. Quality of service

If, at any time, you believe our service to you could be improved, or if you are dissatisfied with any aspect of our service, you should raise the matter with the partner responsible for providing our services to you. If, for any reason, you would prefer to discuss these matters with

someone other than that partner, please contact our managing partner, Mr Simon Peacocke. In this way we are able to ensure that your concerns are dealt with carefully and promptly.

We will investigate all complaints. You have the right to take any complaint up with the New Zealand Institute of Chartered Accountants.

T. Responsibilities for legal documents

If our advice involves lawyers acting separately for you in drafting, preparing or finalising any legal documents, it is agreed that we have prime responsibility for giving advice and will review as requested such legal documents. However, in implementing the advice, prime responsibility for ensuring the documents and agreements achieve their legal and commercial objectives rests with your lawyers. You should understand that failure to provide us with drafts of the relevant documents will clearly affect our ability to comment on and properly advise you on any matters.

U. Jurisdiction and governing law

You agree that this Agreement shall be governed by, and interpreted in accordance with, the laws of New Zealand. You and we irrevocably agree that the Courts of New Zealand shall have exclusive jurisdiction to settle any claim, difference or dispute, including, without limitation, claims for set-off and counterclaims that may arise in connection with the validity, effect, interpretation or performance of, or the legal relationship established by, this contract or otherwise arising in connection with this Agreement.

V. Modification and severability

- (a) If the court holds that any provision of this Agreement or its duration is unenforceable, illegal, restraint, or invalid but any such provision would be enforceable if it was modified or limited, then that provision shall be so modified or limited to the extent necessary.
- (b) Each provision of this document is individually severable. If any provision is or becomes illegal, unenforceable or invalid, it is to be treated as being severed from this document, but the rest of this document will not be affected.

W. Assignment

You may not assign the benefit of this Agreement or the performance of the services to any third party without our prior written consent.

X. GST

If goods and services tax (GST) is payable by us in relation to any supply made by us to you, you agree to pay to us that GST amount in addition to our fees and disbursements. We will provide you with a valid tax invoice where GST is payable by you to us.

Y. Events beyond our control

We are not liable to you for any failure, or delay in performing the services if the failure or delay arose from a cause beyond our reasonable control.

Z. Trust account

We may sometimes hold money on your behalf. It will be held in trust in a client bank account, which is completely separate from the firm's funds. The New Zealand Institute of Chartered Accountants has strict rules about the way accountancy firms must handle their clients' money, and we follow these rules.

AA. BDO entity

BDO New Zealand Ltd, a New Zealand limited liability company, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. Each BDO Member Firm is an independent legal entity in its own country. BDO New Zealand Ltd is the BDO Member Firm in New Zealand. BDO New Zealand Ltd is a national association of independent member firms which operate as separate legal entities. BDO is the brand name for the BDO network and for each of the BDO Member Firms. For more info visit www.bdo.co.nz. This engagement is solely with the entity described on the letterhead of this engagement letter, namely BDO Auckland.